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BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF NORTH CAROLINA

VOLUME 21

1930-1932

DENNIS G. BRUMMITT
ATTORNEY GENERAL

FRANK NASH*
A. A. F. SEAWELL
WALTER D. SILER
ASSISTANT ATTORNEYS GENERAL

* Succeeded by A. A. F. Seawell, July 1, 1931.

REPUBLICAN REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF NORTH CAROLINA

IN THE

SECURITY

EDWARDS & BROUGHTON

PRINTERS

RALEIGH, N. C.

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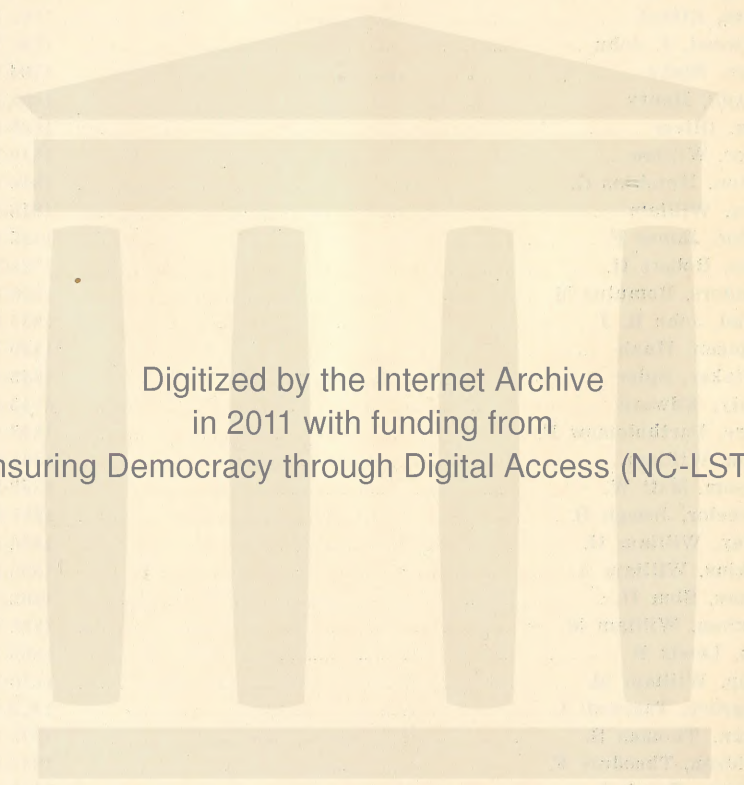
RALEIGH, N. C.

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EDWARDS & BROUGHTON COMPANY
STATE PRINTERS
Raleigh, N. C.

LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF THE CONSTITUTION IN 1776

	<i>Term of Office</i>
Avery, Waightstill	1777-1779
Iredell, James	1779-1782
Moore, Alfred	1782-1790
Haywood, J. John	1791-1794
Baker, Blake	1794-1803
Seawell, Henry	1803-1808
Fitts, Oliver	1808-1810
Miller, William	1810-1810
Burton, Hutchins G.	1810-1816
Drew, William	1816-1825
Taylor, James F.	1825-1828
Jones, Robert H.	1828-1828
Saunders, Romulus M.	1828-1834
Daniel, John R. J.	1834-1840
McQueen, Hugh	1840-1842
Whitaker, Spier	1842-1846
Stanly, Edward	1846-1848
Moore, Bartholomew F.	1848-1851
Eaton, William	1851-1852
Ransom, Matt W.	1852-1855
Batchelor, Joseph B.	1855-1856
Bailey, William H.	1856-1856
Jenkins, William A.	1856-1862
Rogers, Sion H.	1862-1868
Coleman, William M.	1868-1869
Olds, Lewis P.	1869-1870
Shipp, William M.	1870-1872
Hargrove, Tazewell L.	1872-1876
Kenan, Thomas S.	1876-1884
Davidson, Theodore F.	1884-1892
Osborne, Frank I.	1892-1896
Walser, Zeb V.	1896-1900
Douglas, Robert D.	1900-1901
Gilmer, Robert D.	1901-1908
Bickett, T. W.	1909-1916
Manning, James S.	1917-1925
Brummitt, Dennis G.	1925-

LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION
OF THE CONSTITUTION IN 1787



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LETTER OF TRANSMITTAL

STATE OF NORTH CAROLINA,
DEPARTMENT OF THE ATTORNEY GENERAL
RALEIGH, 15 December, 1932.

To His Excellency, O. MAX GARDNER, Governor, Raleigh.

DEAR SIR:—I herewith transmit the Biennial Report of this department for the years 1930-32.

The report contains certain tables of criminal statistics. These, as they relate to courts inferior to the Superior Court, are inadequate and incomplete, because of the abbreviated scope of the statute under which they are collected. That statute, C. S. 1588, is as follows:

The recorder or clerk of any court authorized to be adopted by this subchapter shall make reports to the attorney general of all criminal actions disposed of by such court in the same manner and to the same extent as is now required by law of the clerks of the superior courts of this state.

It will be noted that these reports of criminal statistics of inferior courts are not required to be made except from the courts established under subchapter IV of the chapter on courts. This excludes from the requirement a large number of Recorder and Municipal Courts, created under special acts prior to 1919. All of these inferior courts having jurisdiction greater than that of courts of Justices of the Peace should be required to make such reports, if these statistics are to be of any considerable value.

OPINIONS OF THE OFFICE

Only a very small percentage of the opinions and letters of this department are included in the report. Constantly, we give many advisory opinions to local officers.

Considerable confusion exists in the public mind as to the extent to which opinions of this office are official rulings. That they are such when given to a department, officer or agency of the State Government, in relation to the official duties of the inquirer, is well established. That is also true, by force of statute, with respect to some other opinions, such as those to all election officials. But that is not generally true of letters written by the department to local officers in relation to their duties. Inquiries of this kind have been for so long constantly answered by the department, and there has been such an increase of that practice within recent years, it is now generally thought that such letters are not merely advisory, as is the case, but of full official nature. This popular opinion is particularly prevalent with respect to such letters of the department to local officials, with regard to taxation matters.

THE SCHOOL CODE

Again, I recommend, as I did in 1930, that the school laws be rewritten in their entirety.

The need for this is greater now than then. In 1923, the General Assembly passed a School Code, prepared and developed upon a particular theory. We have now adopted a state school system. Many statutes have been superimposed upon, or added to, that School Code. These later statutes do not articulate with the School Code of 1923, so as to build a structure with parts fitly joined together. Construction of these acts is most difficult, and, in many instances, cannot be attained upon any well-conceived reasoning. We should have an entirely new School Code. These laws should be rewritten, upon the theory of the state school system at present in operation, with such changes as may be made by the General Assembly of 1933.

TAXATION LAWS

I assume that the Revenue and Machinery Acts, as is the practice, will be rewritten at the approaching session of the General Assembly. But, the same should be done with respect to taxation laws of a more permanent nature. The statutes, with respect to sale of land for delinquent taxes, and the foreclosure of tax certificates, should be simplified.

THE ELECTION LAWS

Again, I recommend, as I did in 1930, that our Election Laws be rewritten. We should have a real Australian or secret ballot act. And I think that the absentee voter's law should be repealed.

DEPARTMENTAL APPROPRIATIONS

We have submitted an estimate of the needs of the department for the next biennium. For the fiscal year 1931-32, this department was given an appropriation of \$16,250.00, or \$920.00 in excess of the then salaries. Anyone can readily see that such an appropriation is entirely inadequate. As a consequence, we have had to ask, from time to time, for allotments out of the Contingency and Emergency Fund, and, also, to rely upon other state agencies for traveling expenses, and other items, when undertaking particular tasks for them.

Under the present law, the salary of the Assistant Attorney General, attached to the Revenue Department, is paid out of the appropriation for that department. This should be changed, and the appropriation made directly to the Attorney General's office. The same is true with respect to all other needs of the department. No other state agency should be expected to pay for mimeographing, printing or traveling expenses of this office. A sufficient appropriation should be made to the Attorney General's Department to cover these items.

The Corrupt Practices Act of 1931, and the Anti Trust Act place certain duties upon this department, with respect to investigations. No appropriation has heretofore been made for the expense of such work. As a consequence, when the necessity for such investigations has arisen, the

Attorney General has been forced to ask for an allotment out of the Contingency and Emergency Fund for that purpose. We are now asking for an appropriation of \$5,000.00 for each year of the next biennium, for the expenses of such investigations. In using such an appropriation, the policy of strict economy, pursued by the department with respect to all of its expenditures, will be followed.

THE ATTORNEY GENERAL'S DEPARTMENT

All legal work of the State should be under, and controlled by, the Attorney General. I believe that to be the clear meaning and intent of the Constitution. The name of the office, *ex vi termini*, imports such meaning. That construction is confirmed by the express language of the Constitution, Article III, section 14: "The Attorney General shall be, *ex officio*, the legal adviser of the Executive Department."

In saying this, I am not seeking, or asking for the department, any power or authority other than that which normally, naturally belongs here. Nor would I seek to have this department encroach upon the powers of any other officer. But, I am convinced that the powers and duties conferred upon this department by the Constitution, are incapable of liquidation by any statutory action, which would attempt to confer them upon any other officer.

I, therefore, earnestly recommend that necessary laws be passed placing all legal work for all executive departments under the control and supervision of the Attorney General.

Respectfully,

DENNIS G. BRUMMITT,
Attorney General.

EXHIBIT I

CIVIL ACTIONS DISPOSED OF OR PENDING IN THE COURTS OF NORTH CAROLINA AND THE FEDERAL COURTS

PENDING IN SUPERIOR COURTS OF NORTH CAROLINA

Northcutt v. Peoples Bonded Warehouse and Stedman, Treasurer.
Southeastern Express Co. v. Maxwell, Com'r.
State and Park Commission v. Surety Companies.
Rucker Bonded Warehouse Corp. v. Maxwell, Com'r.
State ex rel. Maxwell v. Reynolds Tobacco Co.
Long v. Anderson and Owen.
General Electric Supply Corp. v. State College.
State v. Standard Oil Co., et al.
State, Stedman, Treas. & Maxwell, Com'r v. Holston Oil Co., et al.
Mrs. S. Holderfield v. Geo. Ross Pou, et al.
Norfolk-Western v. Maxwell, Com'r.
Ashlyn L. Cannon v. Maxwell, Com'r.
U. S. Mortgage Co. v. Maxwell, Com'r.
John P. Stedman, State Treas. v. Consolidated Indemnity Co.
Stedman, Treas. v. Southern Surety Co.
Hackney v. Hood, Com'r of Banks.
Wayne Co., et al. v. Stedman, Treasurer.

DISPOSED OF IN SUPERIOR COURTS OF NORTH CAROLINA

State & Com'r of Revenue v. Lola G. Harwood.
State's Prison v. McGuire.
J. Lawrence Sprunt v. Maxwell, Com'r.
C. Ray Swain v. L. P. McLendon, Chairman, and State Board of
Elections.

PENDING IN THE SUPREME COURT OF NORTH CAROLINA

University of North Carolina v. High Point.
State ex rel. Maxwell, Com'r v. Kent-Coffey Mfg. Co.
Thos. W. Elliott, et al. v. O. Max Gardner, Governor, et al.
Brown Realty Co. v. Maxwell, Com'r.

DISPOSED OF IN THE SUPREME COURT OF NORTH CAROLINA

- Great A. & P. Tea Co. v. Maxwell, Com'r, 199 N. C., 433.
 Bunn v. Com'r of Revenue, 199 N. C., 557.
 Railway Express Agency v. Com'r of Revenue, 199 N. C., 637.
 Sou. Grain & Provision Co. v. Maxwell, Com'r, 199 N. C., 661.
 State and Town of Ahoskie v. Moye, 200 N. C., 11.
 Mrs. L. B. Parsons v. Board of Education, 200 N. C., 88.
 In Re: Hayes, 200 N. C., 133.
 Baker v. State, 200 N. C., 232.
 Moore v. State, 200 N. C., 300.
 State ex rel Boney, Com'r v. Grand Lodge O. F., 200 N. C., 331.
 Maxwell, Com'r v. Chemical Construction Co., 200 N. C., 500.
 Hunt v. State, 201 N. C., 37.
 State, et al. v. M. W. Gant, et al., 201 N. C., 211.
 F. M. Glenn v. Board of Com'rs, Durham County, et al., 201 N. C., 233.
 Hollowell v. Dept. Conservation & Development, 201 N. C., 616.
 Hunt, Admr. v. Adjutant General's Dept., 201 N. C., 707.
 Nichols v. Maxwell, Com'r, 202 N. C., 38
 Kirk v. Maxwell, Com'r, 202 N. C., 41.
 In Re: Bank of Whiteville, 202 N. C., 251.
 Com'r of Banks v. E. C. White, 202 N. C., 311.
 Com'r of Banks v. Harvey, 202 N. C., 380.
 Beaufort County v. Highway Commission, 202 N. C., 433.
 Chowan Co. v. Com'r of Banks, 202 N. C., 672.
 State of N. C. v. T. I. Hughes, et al., 202 N. C., 763.
 Everett v. N. C. Fair Association (per curiam), 202 N. C., ...
 Maxwell v. Trust Co., 203 N. C., 143.
 State of N. C. v. Stikeleather (per curiam), 202 N. C., ...

PENDING IN GENERAL COUNTY COURT (BUNCOMBE CO.)

- S. K. Young v. J. C. Champion.

PENDING IN UNITED STATES SUPREME COURT

- Wallace B. Davis v. State of North Carolina.
 Wallace B. Davis, Luke Lea and Luke Lea, Jr. v. State of North Carolina.

DISPOSED OF IN UNITED STATES SUPREME COURT

- Clark v. Commissioner of Revenue, 282 U. S., 811.
 Hans Rees' Sons, Inc. v. Maxwell, Com'r of Revenue, 283 U. S., 123.
 Great A. & P. Tea Co. v. Maxwell, Com'r of Revenue, 284 U. S., 575.

PENDING IN U. S. DISTRICT COURT

U. S. v. First & Citizens Bank.
Transportation Corp. v. Self.

DISPOSED OF IN U. S. DISTRICT COURT

Nat'l Surety Co. v. Catawba Construction Co. and State Prison Department, 51 Fed (2d), 1074.
Gramling v. Maxwell, Com'r, 52 Fed. (2d), 256.

PENDING IN U. S. CIRCUIT COURT OF APPEALS

U. S. v. Doughton and Jeffress.

DISPOSED OF IN U. S. CIRCUIT COURT OF APPEALS

Garysburg Mfg. Co. v. Pender County, 50 Fed. (2d), 732.

PENDING IN SUPREME COURT OF NEW YORK STATE

Loftin, Receiver, v. University of N. C., et al.

EXHIBIT II

LIST OF CASES ARGUED BY THE ATTORNEY GENERAL AND ASSISTANT ATTORNEY GENERAL BEFORE THE SUPREME COURT, FALL TERM, 1930; SPRING TERM, 1931; FALL TERM, 1931; SPRING TERM, 1932.

AUGUST TERM, 1930

1. State v. Allison, from Haywood; manslaughter; appeal by defendant; affirmed.
2. State v. Baker, from Carteret; worthless check; appeal by defendant; reversed.
3. State v. Beal, from Cherokee; storebreaking, etc.; appeal by defendant; venire de novo.
4. State v. Benthal, from Hertford; larceny; appeal by defendant; affirmed.
5. State v. Bryson, from Jackson; manslaughter; appeal by defendant; new trial.
6. State v. Burke, from Hertford; profane language; appeal by defendant; affirmed.
7. State v. Burno, from Richmond; A. D. W.; appeal by defendant; affirmed.
8. State v. Cornett, from Ashe; injury to property; appeal by defendant; new trial.
9. State v. Ellis, et al., from Rowan; robbery, etc.; appeal by defendant; affirmed.
10. State v. English, from Duplin; murder, 2nd degree; appeal by defendant affirmed.
11. State v. Fain, from Cherokee; housebreaking, etc.; appeal by defendant; reversed.
12. State v. Fletcher, from Wilkes; prostitution; appeal by defendant; reversed.
13. State v. Hall, from Hertford; liquor; appeal by defendant; affirmed.
14. State v. Harvell, from Brunswick; liquor; appeal by defendant; affirmed.
15. State v. Herring, C., from Sampson; murder, first degree; appeal by defendant; affirmed.

16. State v. Herring, E., from Sampson; murder, first degree; appeal by defendant; new trial.

17. State v. Hefner, from Catawba; A. W. intent to kill; appeal by defendant; affirmed.

18. State v. Horton, from Moore; worthless check; appeal by defendant; reversed.

19. State v. Johnson, from Vance; liquor; appeal by defendant; reversed.

20. State v. Lawrence, from Hertford; burglary, first degree; appeal by defendant; affirmed.

21. State v. Martin, from Forsyth; worthless check; appeal by defendant; reversed.

22. State v. McRae, from Scotland; murder, first degree; appeal by defendant; affirmed.

23. State v. Nelson, from Forsyth; false pretense; appeal by defendant; new trial.

24. State v. Portee, from Richmond; assault with deadly weapon; appeal by defendant; affirmed.

25. State v. Ross, from Pitt; worthless check; appeal by defendant; judgment arrested; error.

26. State v. Scoggins, from Polk; liquor; appeal by defendant; affirmed.

27. State v. Scoggins, from Polk; resisting officer; appeal by defendant; affirmed.

28. State v. Sizemore, from Stokes; violation game law; appeal by defendant; affirmed.

29. State v. Sloan, from Person; murder, first degree; appeal by defendant; affirmed.

30. State v. Staley, from Wilkes; forfeited recognizance; appeal by defendant; affirmed.

31. State v. Sterling, from New Hanover; murder, first degree; appeal by defendant; affirmed.

32. State v. Talley, from Transylvania; larceny; appeal by defendant; new trial.

33. State v. Tart, from Harnett; carnal knowledge; appeal by defendant; remanded.

DOCKETED AND DISMISSED

34. State v. Allen, from Buncombe.

35. State v. Bass, from Wayne.

36. State v. Bynum, from Wilson.

37. State v. Day, from Carteret.
 38. State v. Harris, from Edgecombe.
 39. State v. Hayeslip, from Forsyth.
 40. State v. Massey, from Durham.
 41. State v. McBryde, from Hoke.
 42. State v. Plott, from Clay.
 43. State v. Sharp, from Wilson.
 44. State v. Shuler, from Cherokee.
 45. State v. Uzzell, from Wayne.
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FEBRUARY TERM, 1931

46. State v. Casey, from Lenoir; murder, first degree; appeal by defendant; affirmed.
47. State v. Caudle, from Guilford; embezzlement; appeal by defendant; affirmed.
48. State v. Combs, from Surry; housebreaking, etc.; appeal by defendant; affirmed.
49. State v. Doyle, from Halifax; carnal knowledge; appeal by defendant; affirmed.
50. State v. Fields, from Vance; liquor; appeal by defendant; affirmed.
51. State v. Hicks, from Person; liquor; appeal by defendant; new trial.
52. State v. Lattimore, from Cleveland; violation banking law; appeal by defendant; affirmed.
53. State v. Levy, from Durham; larceny; appeal by defendant; affirmed.
54. State v. Marion, from Davidson; murder, second degree; appeal by defendant; affirmed.
55. State v. Rhodes, from McDowell; murder, first degree; appeal by defendant; new trial.
56. State v. Rose, from Wilson; liquor; appeal by defendant; affirmed.
57. State v. Shatley, from Wilkes; seduction; appeal by defendant; reversed.
58. State v. Steadman, from Polk; robbery; appeal by defendant; affirmed.
59. State v. Vanderburg, from Gaston; C. C. W.—A. D. W.; appeal by defendant; new trial.

60. State v. Watkins, from Wake; A. D. W., appeal by defendant; new trial.

DOCKETED AND DISMISSED

- 61. State v. Fay, from Forsyth.
 - 62. State v. Anderson, from Mecklenburg.
 - 63. State v. Goldston, from Chatham.
 - 64. State v. Oakes, from Guilford.
 - 65. State v. Wilson, et al., from Catawba.
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AUGUST TERM, 1931

66. State v. Arnold, from Craven; murder, second degree; appeal by defendant; affirmed.

67. State v. Ashe, from Cherokee; municipal ordinance; appeal by defendant; reversed.

68. State v. Beal, from Cherokee; burglary, etc.; appeal by defendant; affirmed.

69. State v. Best, from Cherokee; larceny, etc.; appeal by defendant; new trial.

70. State v. Brewer, from Wake; violation banking laws; appeal by defendant; affirmed.

71. State v. Brigman, from Buncombe; abandonment; appeal by defendant; new trial.

72. State v. Brock, et al., from Swain; larceny, etc.; appeal by defendant; appeal dismissed.

73. State v. Brown, from Moore; abortion; appeal by defendant; new trial.

74. State v. Casey, from Lenoir; murder, first degree; appeal by defendant; (newly discovered evidence) error and remanded.

75. State v. Cox, from Pitt; robbery; appeal by defendant; affirmed.

76. State v. Deal, from Burke; manslaughter; appeal by defendant; affirmed.

77. State v. Dowd, from Moore; perjury; appeal by defendant; new trial.

78. State v. Durham, from Guilford; manslaughter; appeal by defendant; affirmed.

79. State v. Elmore, from Macon; breaking, etc.; appeal by defendant; new trial.

80. State v. Gibson, from Buncombe; abandonment; appeal by defendant; affirmed.

81. State v. Goss, from Lee; murder, first degree; appeal by defendant; affirmed.

82. State v. Griffin, from Orange; murder, first degree; appeal by defendant; affirmed.

83. State v. Guice, from Henderson; assault on female; appeal by defendant; affirmed.

84. State v. Herring, E., from Sampson; murder, first degree; appeal by defendant; affirmed.

85. State v. Hildebran, from Burke; disorderly house; appeal by defendant; affirmed.

86. In re: Hubbard, habeas corpus; reversed.

87. State v. Jones, from Greene; abandonment; appeal by defendant; affirmed.

88. State v. Kirby, from Polk; affray; appeal by defendant, remanded.

89. State v. Lancaster, from Edgecombe; embezzlement; appeal by defendant; affirmed.

90. State v. Lathinghouse, from Carteret; manslaughter; appeal by defendant affirmed.

91. State v. Moore, from Davidson; murder, first degree; appeal by defendant; affirmed.

92. State v. Morrison, from Cabarrus; housebreaking; appeal by defendant; affirmed.

93. State v. Rhodes, M., from Henderson; embezzlement; appeal by defendant; affirmed.

94. State v. Rice, from Madison; manslaughter, appeal by defendant; new trial.

95. State v. Shipman, from Transylvania; conspiracy; appeal by defendant; affirmed.

96. State v. Shumaker, et al., from Iredell; liquor; appeal by defendant; affirmed.

97. State v. Smith, from Vance; burglary, first degree-rape; appeal by defendant; affirmed.

98. State v. Spain, from Durham; burglary, second degree; appeal by defendant; new trial.

DOCKETED AND DISMISSED

99. State v. Cook, from Durham.

100. State v. Jones, from Johnston.

101. State v. Kiger, from Forsyth.

102. State v. Kirby, from Haywood.
 103. State v. Matthews, et al., from Rowan.
 104. State v. McArtan, from Harnett.
 105. State v. Rives, from Chatham.
 106. State v. Turner, from Forsyth.
 107. State v. Weayer, from Harnett.
-

FEBRUARY TERM, 1932

108. State v. Agnew, from Cabarrus; A. D. W.; appeal by defendant; new trial.
109. State v. Avant, from Scotland; murder, first degree; appeal by defendant; new trial.
110. State v. Boger, from Mecklenburg; manslaughter; appeal by defendant; new trial.
111. State v. Church, from Burke; arson; appeal by defendant; reversed.
112. State v. Cole, from Robeson; violation banking laws; appeal by defendant; affirmed.
113. State v. Cox, et al., from Pitt; robbery; appeal by defendant; appeal dismissed.
114. State v. Davis, from Buncombe; violation banking laws; appeal by defendant; affirmed.
115. State v. Donnell, from Guilford; murder, first degree; appeal by defendant; affirmed.
116. State v. Ferrell, from Durham; manslaughter; appeal by defendant; affirmed.
117. State v. Fleming, from Surry; manslaughter; appeal by defendant; affirmed.
118. State v. Griffin, from Orange; murder, first degree; appeal by defendant; appeal dismissed.
119. State v. Hauser, from Davie; murder, first degree; appeal by defendant; new trial.
120. State v. Lea, et al., from Buncombe; conspiracy; appeal by defendants; affirmed.
121. State v. Lefler, from Davie; A. & B.; appeal by defendant; new trial.
122. State v. Livingston, from Wilkes; breaking, etc.; appeal by defendant; new trial.

123. State v. Lyon, from Guilford; malfeasance; appeal by defendant; appeal dismissed.

124. State v. Mitchell, from Wake; violation banking laws; appeal by State; affirmed.

125. State v. Moore, from Davidson; murder, first degree; appeal by defendant; appeal dismissed.

126. State v. Myers, from Pitt; murder, first degree; appeal by defendant; affirmed.

127. State v. Myrick, from Burke; A. & B.; appeal by defendant; reversed.

128. State v. Myrick, from Burke; liquor; appeal by defendant; reversed.

129. State v. McKay, from Brunswick; seduction; appeal by defendant; affirmed.

130. State v. Posey, from Swain; murder, second degree; appeal by defendant; affirmed.

131. State v. Rawls, from Pitt; embezzlement; appeal by defendant; new trial.

132. State v. Simmerson, from Forsyth; liquor; appeal by defendant; appeal dismissed.

133. State v. Smith, from Brunswick; embezzlement; appeal by defendant; affirmed.

134. State v. Stansell, from Buncombe; manslaughter; appeal by defendant; new trial.

135. State v. Turpin, from Swain; liquor; appeal by defendant; new trial.

136. State v. Whitehurst, et al., from Pitt; larceny; appeal by defendant; affirmed.

DOCKETED AND DISMISSED

137. State v. Buffkin, from Columbus.

138. State v. Cain, from Forsyth.

139. State v. Edney, from Henderson.

140. State v. Farlow, from Montgomery.

141. State v. Koonce, et al., from Lenoir.

142. State v. McCall, from Hoke.

143. State v. Oliver, from Forsyth.

144. State v. Oliver, from Forsyth.

145. State v. Rector, from Burke.

SUMMARY OF CASES

Affirmed on defendant's appeal.....	62
New trial or reversed on defendant's appeal.....	36
Affirmed on State's appeal.....	1
Remanded on defendant's appeal	3
Judgment arrested	1
Venire de novo	1
Appeal dismissed	41
Total	145

CRIMINAL STATISTICS

STATEMENT A

THE FOLLOWING STATEMENT SHOWS THE CRIMINAL CASES DISPOSED OF IN THE SUPERIOR COURTS
DURING THE FALL TERM, 1930, AND SPRING TERM, 1931

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alamance.....	60	16		70	6	49	2	23	2	76
Alexander.....	62	1		62	1	19	11	29	4	63
Alleghany.....	25			25		24	1			25
Anson.....	125	183		260	18	263	22	17	6	308
Ashe.....	80	4		78	6	72	10	2		84
Avery.....	199	3		184	18	119	38	41	3	202
Beaufort.....	116	56		168	4	122	17	33		172
Bertie.....	10	20		27	3	13	13	3	1	30
Bladen.....	45	13		58		42	12	3	1	58
Brunswick.....	45	13		56	2	28	22	8		58
Buncombe.....	209	105		281	33	283	20	9	2	314
Burke.....	45	8		48	5	41	8	4		53
Cabarrus.....	171	75		235	11	117	35	88	6	246
Caldwell.....	167	41	1	204	5	180	18	11		209
Camden.....	9	4		13		10		3		13
Carteret.....	21	11		31	1	32				32
Caswell.....	31	17		47	1	37	7	4		48
Catawba.....	73	6		76	3	77			2	79
Chatham.....	24	37		60	1	46	12	3		61
Cherokee.....	87	13		93	7	71	29			100
Chowan.....	16	6		21	1	14	7	1		22
Clay.....	40			40		28	4	8		40
Cleveland.....	165	52		212	5	153	28	36		217
Columbus.....	189	51	2	235	7	152	42	41	7	242
Craven.....	78	81		153	6	110	24	25		159
Cumberland.....	113	123		223	13	128	28	79	1	236
Currituck.....	7	15		22		18	4			22
Dare.....	9	1		10		9	1			10
Davidson.....	210	57		248	19	203	30	34		267
Davie.....	80	29		102	7	59	18	32		109
Duplin.....	53	45		95	3	52	9	37		98
Durham.....	189	232		372	49	308	34	79		421
Edgecombe.....	49	111		143	17	103	27	29	1	160
Forsyth.....	348	377		640	85	585	120	20		725
Franklin.....	31	41		71	1	52	17	3		72
Gaston.....	273	100		351	22	186	51	134	2	373
Gates.....	31	56		82	5	59	12	16		87
Graham.....	63			63		27	2	33	1	63
Granville.....	77	139		202	14	177	19	19	1	216
Greene.....	28	31		59		37	12	9	1	59
Guilford.....*	348	208	1	520	37	436	77	43	3	559
Halifax.....	146	189		320	15	283	25	25	2	335
Harnett.....	110	60		167	3	115	20	35		170
Haywood.....	226	12		222	16	87	37	113	1	238
Henderson.....	71	15		83	3	58	18	10		86
Hertford.....	47	80		121	6	94	23	9	1	127
Hoke.....	8	39		46	1	38	7	2		47
Hyde.....	8	23		28	3	22	8	1		31

STATEMENT A—Continued

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Iredell.....	74	34	-----	99	9	89	7	12	-----	108
Jackson.....	39	1	-----	40	-----	23	3	14	-----	40
Johnston.....	86	40	-----	122	4	125	-----	-----	1	126
Jones.....	42	29	-----	67	4	48	13	10	-----	71
Lee.....	27	23	-----	49	1	43	5	2	-----	50
Lenoir.....	109	82	-----	172	19	130	35	25	1	191
Lincoln.....	45	18	-----	63	-----	47	12	4	-----	63
Macon.....	120	9	-----	125	4	67	17	45	-----	129
Madison.....	110	10	-----	115	5	76	29	15	-----	120
Martin.....	41	45	-----	85	1	68	7	11	-----	86
McDowell.....	388	37	-----	408	17	182	18	221	4	425
Mecklenburg.....	321	330	-----	596	55	398	110	127	16	651
Mitchell.....	81	-----	-----	75	6	65	5	11	-----	81
Montgomery.....	50	24	-----	73	1	31	19	23	1	74
Moore.....	51	43	-----	76	18	67	6	19	2	84
Nash.....	113	133	-----	232	14	123	33	89	1	246
New Hanover.....	58	184	-----	221	21	178	61	2	1	242
Northampton.....	34	95	-----	126	3	79	35	14	1	129
Onslow.....	95	56	-----	147	4	113	13	25	-----	151
Orange.....	99	81	-----	169	11	132	22	25	1	180
Pamlico.....	42	38	-----	76	4	49	19	12	-----	80
Pasquotank.....	24	37	-----	58	3	38	19	3	1	61
Pender.....	43	68	-----	105	6	68	27	15	1	111
Perquimans.....	2	7	-----	9	-----	3	-----	6	-----	9
Person.....	132	74	-----	199	7	162	18	26	-----	206
Pitt.....	33	58	-----	89	2	91	-----	-----	-----	91
Polk.....	80	12	-----	86	6	79	13	-----	-----	92
Randolph.....	141	50	-----	181	10	120	19	51	1	191
Richmond.....	61	87	-----	140	8	95	19	34	-----	148
Robeson.....	187	89	57	313	20	148	33	151	1	333
Rockingham.....*	159	101	-----	250	10	164	34	62	1	261
Rowan.....†	119	93	-----	196	16	154	18	41	-----	213
Rutherford.....	68	22	-----	86	4	79	11	-----	-----	90
Sampson.....	51	42	-----	93	-----	74	17	2	-----	93
Scotland.....	72	38	-----	110	-----	55	4	51	-----	110
Stanly.....	28	11	-----	37	2	32	7	-----	-----	39
Stokes.....	86	36	-----	120	2	91	15	16	-----	122
Surry.....	91	11	-----	101	1	98	4	-----	-----	102
Swain.....	35	-----	1	36	-----	20	5	11	-----	36
Sylvania.....	33	5	-----	35	3	26	10	2	-----	38
Tyrrell.....	11	5	-----	15	1	8	1	6	1	16
Union.....	59	50	-----	108	1	80	13	16	-----	109
Vance.....	35	45	-----	73	7	56	22	2	-----	80
Wake.....	393	395	-----	743	45	529	119	127	13	788
Warren.....	18	44	-----	54	8	44	9	8	1	62
Washington.....	2	16	-----	15	3	11	6	1	-----	18
Watauga.....	64	3	-----	65	2	49	1	17	-----	67
Wayne.....	84	91	-----	166	9	109	18	48	-----	175
Wilkes.....	494	27	-----	492	29	240	42	227	12	521
Wilson.....	98	131	-----	203	17	147	14	58	1	220
Yadkin.....	169	18	-----	177	10	118	24	45	-----	187
Yancey.....	100	3	-----	97	6	74	16	13	-----	103
Total.....	*9,605	5,780	62	14,545	902	10,433	2,009	2,899	110	15,451

* 1 Corporation.

† 1 Corporation.

* 4 Corporations.

STATEMENT B

THE FOLLOWING STATEMENT SHOWS THE OFFENSES WITH WHICH DEFENDANTS WERE CHARGED IN THE SUPERIOR COURTS OF THE STATE DURING THE FALL TERM, 1930, AND SPRING TERM, 1931

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burgery	Burglary—First Degree	Burglary—Second Degree
Alamance.....	1					11						1					
Alexander.....				2				5					1				
Alleghany.....						11											
Anson.....	2			2	1		4	19	4			1	7				
Ashe.....				2			2	20		1							
Avery.....	3			7		2		9			1						
Beaufort.....	3					14	2	1	3	3		3	6				1
Bertie.....									1								
Bladen.....								3									
Brunswick.....					1	1		2	2	1							
Buncombe.....	4	1				8	4	13	3	2	9	1	34		4		
Burke.....						2	1	11					12		1		
Cabarrus.....	11				3	7	8	30	1	1			10				
Caldwell.....	4					1	5	23	1				24				2
Camden.....						5											
Carteret.....						2	1										
Caswell.....						3		5				1	6				2
Catawba.....								7									
Chatham.....					1	6	2	4		1			22				
Cherokee.....	1					2		5				1					
								6				1					

STATEMENT B—Continued

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burgery	Burglary—First Degree	Burglary—Second Degree
Johnston.....	3					6	1	9	4	1							
Jones.....				2		3	1	10									
Lee.....						3	1	1					1				
Lenoir.....	2					4	5	23		1		2	2				3
Lincoln.....						3		13	1				2				
Macon.....	2			2		1		8				1					1
Madison.....	1	1				3		6									
Martin.....				2		1	4	13	1	1			1				
McDowell.....	3			12		20	2	58				2	3				1
Mecklenburg.....	6	1	1		5	8	3	57	8	3		2	8		2		11
Mitchell.....	7	1				1	1	10									
Montgomery.....	1		1			1	3	5									
Moore.....					18			3					32				
Nash.....	3			3	2	2	2	9	5			4					1
New Hanover.....	4					2	2	18		1		3	1		2		
Northampton.....	4			14		9	1	18					1				
Onslow.....	3			2		6	3	15	1				9				
Orange.....						1	3	25			1		9				
Pamlico.....	1					6	3	7				1					
Pasquotank.....					2	1		3	3	1				1			

Pender.....	2	1					17					1	4						
Perquimans.....							1						1						
Person.....	4						7						1						
Pitt.....							2						1						
Polk.....							8												
Randolph.....	2						19						1						
Richmond.....	1	1					10	1				1	37			1			1
Robeson.....	5	1					32						1						1
Rockingham.....	2						30	1					1						1
Rowan.....	5		1				1						59						
Rutherford.....							1												
Sampson.....							11	2					2						1
Scotland.....													17						
Stanly.....							1	6					8						
Stokes.....	1						18						5						
Surry.....	1						11												
Swain.....							2												
Transylvania.....							10												
Tyrrell.....							3												
Union.....							1	6					36						
Vance.....	1						1						1						
Wake.....	11	1					41	23				2	11			1			
Warren.....							1												
Washington.....							4												
Watauga.....							5						1						
Wayne.....		5					3	2											1
Wilkes.....	2						53												
Wilson.....	3						9												
Yadkin.....	1						16												
Yancey.....							8	4											
Totals.....	185	16	8	150	54	463	146	1185	135	71	16	49	673	2	12	2			42

STATEMENT B—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Alamance.....											3			1			
Alexander.....														1			
Alleghany.....														1			7
Anson.....		23				2		3	3								
Ashe.....		6					2	3	3					1	2		1
Avery.....		1					3				1			2	8		2
Beaufort.....		1						5	1		3			1			4
Bertie.....	1										2				2		1
Bladen.....		1									1	2					
Brunswick.....																	
Buncombe.....	1						8				5	1		1			2
Burke.....		1				1								1			
Cabarrus.....		8					3	1	1		1			4			2
Caldwell.....		5					2							1			1
Camden.....							1							1			
Carteret.....																	
Caswell.....																	
Catawba.....								1	1	2				1	1		6
Chatham.....																	3
Cherokee.....	1	8		1					3		1	2					5

STATEMENT B—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Johnston.....	2	1										1					
Jones.....		1				2								1	2		
Lee.....		2									1						1
Lenoir.....	1	5				1	2				1			1	1		2
Lincoln.....		2						2			1						1
Macon.....		2							6		2			1			3
Madison.....		9					1	4	1	1							
Martin.....	1					1											
McDowell.....		17					2					1			2		
Mecklenburg.....		7									8	6		8	2		
Mitchell.....		1					8							2	1		1
Montgomery.....		1				1		3	3					1			
Moore.....								1			2				1		
Nash.....	1					1		3			3	1		3	18		1
New Hanover.....		2									3	3		4			4
Northampton.....	2							2	4		1						3
Onslow.....		5				1			3		2	3					6
Orange.....		3		1			2	1			3						5
Pamlico.....		4						1	3							2	
Pasquotank.....						1								1			

Pender.....	2				1		3				1	1	
Perquimans.....							1	1			1		
Person.....	13						1	1				1	
Pitt.....	1	1			1								
Polk.....	1	3			2		1						
Randolph.....	1												
Richmond.....	1						1	1			2		
Robeson.....	4				4	1		3	1		3		3
Rockingham.....	1				8		2	1			1		19
Rowan.....	8				1		2	4			3		
Rover.....	3						1	1			2		1
Rutherford.....													2
Sampson.....	1							2					4
Scotland.....											1		
Stanly.....													1
Stokes.....	2	12					1				1		1
Surry.....							2						2
Swain.....	2	1						2			2		
Transylvania.....		2											1
Tyrrell.....											1		
Union.....		1						7			6		
Vance.....													2
Wake.....	16				1	5	5	2			1		3
Warren.....							1				1		15
Washington.....											2		1
Watauga.....		1			1	1		1			1	1	
Wayne.....	2											2	
Wilkes.....	2	18			2	9		10			6	1	3
Wilson.....		3					1				2	3	
Yadkin.....	3						1	1				1	
Yancey.....		1										1	1
Totals.....	43	311		2	10	22	72	85	74	3	140	73	182

STATEMENT B—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Alamance.....	1				21			21				3			1			
Alexander.....					1			11				2						
Alleghany.....			1				1	3										
Anson.....	2	2	5		2			39			1	4	1		1			
Ashe.....	2	2			3		2	9			1							
Avery.....	3	4	4		5	2		21			3	1	3		1			
Beaufort.....	5				6	1		20			6	12			4			
Bertie.....	1				4			12							4			
Bladen.....	1	1				1		21			2	1			5			
Brunswick.....	3	4	1					12				2			2			
Buncombe.....	11				31		2	89			3				11			
Burke.....	2	2						8			2				5			
Cabarrus.....	4	4	1		2	2		66				6			2			
Caldwell.....	4						1	31			1	5						
Camden.....								3										
Carteret.....	1							3			2							
Caswell.....								7				5						
Catawba.....	4							14								2		
Chatham.....	2				2			9							3			
Cherokee.....			2		2			12				1			1			

STATEMENT B—Continued

Counties	Forgery	Formication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Johnston.....	5	3	8	16	1	36	1	36	2	1	2	1	1	2	2			
Jones.....	2		3			14		14	1	2	1	2		1	1			
Lee.....	5					20		20	1	2	1	2				1		
Lenoir.....	9			10	1	32		32	4	5	4	5		3	3			
Lincoln.....	1	1				12		12	1			1						
Macon.....	1		3	1	1	12		12			3	4		2	2			
Madison.....		3	1	3		20		20			1	4		2	2	1		1
Martin.....	1			10		30		30			1	2		2	2			
McDowell.....	5	10	8	2	3	49		49			1	6		1	2	2		
Mecklenburg.....	13	4	3	28	1	108		108	1		13	25			21		3	
Mitchell.....	1					9		9				2						
Montgomery.....		2		7		17		17	1					3	3		4	
Moore.....	6					15		15						6	6			
Nash.....	2		6		2	96		96	2		3	6		2	2	1		
New Hanover.....	3		2	16		70	2	70	2		5	6		5	5	2		
Northampton.....		2		1	1	26		26				1						
Onslow.....	2	1			2	14		14			1	4		3	3	1	2	
Orange.....				4		25	1	25	1			3	6	3	3		1	
Pamlico.....		3				17		17				5				2		
Pasquotank.....				2		31		31			1	5			1			

STATEMENT B—Continued

Counties	Official Misdemeanor	Perjury	Poisoning	Prohibition Laws— Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws— Violation	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Alamance.....		1		5											1	2	76
Alexander.....				19	3			1		2		1				6	63
Alleghany.....				8													25
Anson.....				142			2	5		1		5			12	11	308
Ashe.....				16				1		1	2				7		84
Avery.....	4			77	11			3	1		1				4	6	202
Beaufort.....				45				1	1			3			12	5	172
Bertie.....	1			1		1			2	1		2					30
Bladen.....				7		1		2							1	5	58
Brunswick.....		2		11									5			7	58
Buncombe.....				52					9					1	1	3	314
Burke.....				3											1		53
Cabarrus.....				45	3		1	1	3	1		7	2			3	246
Caldwell.....				98					1							1	209
Camden.....				3													13
Carteret.....				2	1								2		3	1	32
Caswell.....				20									1				48
Catawba.....				8					2	1			4		1		79
Chatham.....				4				2		1					2	3	61
Cherokee.....				42				1	3			21					100

Pender.....	1	1	1	1	2	7	3	111
Perquimans.....	3						6	9
Person.....	70	1					4	206
Pitt.....	13		1			5	4	91
Polk.....	48		3				1	92
Randolph.....	74							191
Richmond.....	27	2	2				5	148
Robeson.....	46	1	1		1		1	333
Rockingham.....	99	3	3		1	32	14	261
Rowan.....	30	1	4				5	213
Rutherford.....	24					19	1	90
Sampson.....	8	2	2			7	5	93
Scotland.....								110
Stanly.....	3				1			39
Stokes.....	40		1		1		3	122
Surry.....	42		2	2				102
Swain.....	6							36
Tennessee.....	6						1	38
Tyrrell.....	4						2	16
Union.....	9	1	1		1		2	109
Vance.....	8		4	2		2	3	80
Wake.....	188	1	5	16	3		17	788
Warren.....	2		1			13		62
Washington.....				1			2	18
Watauga.....	36	1					5	67
Wayne.....	23	1	1	8	2		3	175
Wilkes.....	155		3	3	2	26	12	521
Wilson.....	20			7	1		7	220
Yadkin.....	70		1			4	2	187
Yancey.....	45			2		2	1	103
Totals.....	19	31	79	217	3	64	442	15,451

DISPOSITION OF VIOLATIONS OF PROHIBITION LAW
SUPERIOR COURTS, 1930-31

Convictions.....	2,703
Acquittals.....	393
Nolle Pros.....	645
Otherwise Disposed of.....	34
Total.....	3,775

STATEMENT A-1

THE FOLLOWING STATEMENT SHOWS CRIMINAL CASES DISPOSED OF IN COURTS BELOW THE
SUPERIOR COURT, REPORTING TO THIS DEPARTMENT, DURING
THE FALL TERM, 1930, SPRING TERM, 1931

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alamance.....	26	12		38		38				38
Alexander.....	81	15		92	4	85	9	2		96
Bertie.....	73	138		202	9	177	19	15		211
Brunswick.....	106	39		129	16	92	35	18		145
Buncombe.....	169	33		182	20	143	43	14	2	202
Burke.....	58	11		66	3	68		1		69
Cabarrus.....	465	107		555	17	570	1		1	572
Caldwell.....	152	26		173	5	148	16	14		178
Camden.....	3	2		5		4			1	5
Chatham.....	95	149		235	9	202	37	5		244
Chowan.....	19	38		55	2	35	22			57
Columbus.....	214	100	1	295	20	214	63	34	4	315
Craven.....	73	126		186	10	152	41	6		199
Cumberland.....	298	209	3	466	44	353	119	38		510
Davidson.....	446	118		528	36	506	53	5		564
Duplin.....	66	76		137	5	93	32	17		142
Edgecombe.....	8	14		21	1	17	5			22
Franklin.....	47	43		86	4	66	24			90
Gaston.....	515	248		659	104	727	16	20		763
Halifax.....	77	139		199	17	188	7	21		216
Harnett.....	388	238	1	593	34	472	109	46		627
Haywood.....	183	31		207	7	205	7	2		214
Henderson.....	92	31		103	20	77	22	24		123
Hoke.....	11	14	1	26		11	7	8		26
Iredell.....	48	16		64		57	5	2		64
Jackson.....	118	6	2	117	9	117	9			126
Lee.....	29	48		76	1	77				77
Lincoln.....	114	22		130	6	98	25	11	2	136
Madison.....	58	1		56	3	42	17			59
Mecklenburg.....	1,187	836		1,805	218	1,918	77	28		2,023
Montgomery.....	13	8		21		16	3		2	21
Moore.....	11	14		24	1	23	2			25
Nash.....	115	140		240	15	202	45	7	1	255
Orange.....*	222	245		436	31	381	40	47		468
Pitt.....	17	25		38	4	42				42
Richmond.....	52	43		86	9	61	25	9		95
Rockingham.....	270	281		492	59	517	31	2	1	551
Sampson.....	124	76		190	10	120	56	24		200
Surry.....	278	32		298	12	288	14	2	6	310
Transylvania.....	14	2		10	6	2	5	9		16
Tyrrell.....	19	21		38	2	31	7	2		40
Union.....	278	238		487	29	442	46	28		516
Vance.....	323	179		472	30	420	74	3	5	502
Wake.....	211	204		397	18	318	60	36	1	415
Washington.....	25	84		97	12	78	22	9		109
Wilkes.....	15	6		21		20	1			21
Wilson.....	170	150		303	17	188	72	60		320
Total.....	7,376	4,634	8	11,139	879	10,101	1,323	569	26	12,019

* 1 Corporation.

[illegible]

Chowan.....	5				8	4		1				1				
Clay.....																
Cleveland.....	3	2	4		2	48	1	17	1			3	1			3
Columbus.....					2	53		6								
Craven.....	1															
Cumberland.....	5	8			2	59	2	35				7				3
Currituck.....																
Dare.....																
Davidson.....	19				2	16	1	80				2				
Davie.....																
Duplin.....	4	2	2			14		5	1			3				1
Durham.....																
Edgecombe.....						6		4								
Forsyth.....																
Franklin.....						8		3				1				
Gaston.....	4	56			1	59		11	5							
Gates.....																
Graham.....																
Granville.....																
Greene.....																
Guilford.....																
Halifax.....	3					21	1	3				1				
Harnett.....	2	8	3		4	58		9	1			1				
Haywood.....						7		13	2							
Henderson.....	4				1	22		6								3
Hertford.....																
Hoke.....						8		5								
Hyde.....																
Iredell.....		1				2	1	2				1				
Jackson.....	6		2		6	7		2								

**DISPOSITION OF VIOLATIONS OF PROHIBITION LAW IN THE COURTS BELOW THE
SUPERIOR COURTS, FALL TERM, 1930, SPRING TERM, 1931**

Convictions.....	4,821
Acquittals.....	348
Nolle Pros.....	160
Otherwise Disposed of.....	
Total.....	5,338

STATEMENT C

THE FOLLOWING STATEMENT SHOWS THE CRIMINAL CASES DISPOSED OF IN THE SUPERIOR COURTS
DURING THE FALL TERM, 1931, AND SPRING TERM, 1932

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alamance.....	97	27	-----	121	3	84	10	30	-----	124
Alexander.....	31	4	-----	34	1	21	10	4	-----	35
Alleghany.....	13	2	-----	15	-----	12	3	-----	-----	15
Anson.....	46	24	-----	68	2	34	12	23	1	70
Ashe.....	92	-----	-----	90	2	77	14	-----	1	92
Avery.....	86	2	-----	80	8	51	17	19	1	88
Beaufort.....	82	22	-----	100	4	58	15	31	-----	104
Bertie.....	20	10	-----	28	2	21	9	-----	-----	30
Bladen.....	21	14	-----	35	-----	24	6	5	-----	35
Brunswick.....	36	7	-----	41	2	23	14	1	5	43
Buncombe.....	250	117	-----	336	31	326	41	-----	-----	367
Burke.....	61	4	-----	64	1	54	3	8	-----	65
Cabarrus.....	153	65	-----	213	5	139	39	39	1	218
Caldwell.....	72	15	-----	85	2	64	13	10	-----	87
Camden.....	9	6	-----	15	-----	5	7	3	-----	15
Carteret.....	25	8	-----	32	1	29	1	-----	3	33
Caswell.....	55	65	-----	120	-----	79	36	4	1	120
Catawba.....	65	6	-----	68	3	71	-----	-----	-----	71
Chatham.....	37	15	-----	46	6	45	4	3	-----	52
Cherokee.....	170	9	-----	174	5	148	29	2	-----	179
Chowan.....	8	3	-----	11	-----	8	2	1	-----	11
Clay.....	40	3	-----	43	-----	33	1	9	-----	43
Cleveland.....	96	59	-----	151	4	82	21	52	-----	155
Columbus.....	166	50	-----	209	7	139	60	16	1	216
Craven.....	70	90	-----	151	9	97	22	41	-----	160
Cumberland.....	126	101	2	210	19	167	18	40	4	229
Currituck.....	8	12	-----	20	-----	13	3	4	-----	20
Dare.....	6	1	-----	7	-----	5	2	-----	-----	7
Davidson.....	183	53	-----	230	6	181	36	17	2	236
Davie.....	78	48	-----	124	2	87	17	22	-----	126
Duplin.....	60	46	-----	103	3	80	11	15	-----	106
Durham.....	186	203	-----	352	37	254	73	59	3	389
Edgecombe.....	62	96	-----	150	8	102	25	31	-----	158
Forsyth.....	394	366	-----	685	75	631	126	-----	3	760
Franklin.....	32	47	-----	77	2	49	22	7	1	79
Gaston.....	314	95	-----	388	21	246	69	91	3	409
Gates.....	16	36	-----	52	-----	33	6	13	-----	52
Graham.....	99	-----	-----	91	8	26	8	65	-----	99
Granville.....	73	103	-----	162	14	112	32	29	3	176
Greene.....	68	58	-----	109	17	70	21	34	1	126
Guilford.....	405	251	-----	601	55	501	93	61	1	656
Halifax.....	71	65	-----	132	4	96	29	10	1	136
Harnett.....	165	57	1	217	6	88	32	101	2	223
Haywood.....	239	7	-----	235	11	119	36	89	2	246
Henderson.....	54	25	-----	70	9	36	19	24	-----	79
Hertford.....	43	74	-----	115	2	90	23	3	1	117
Hoke.....	14	21	-----	35	-----	17	10	8	-----	35
Hyde.....	11	29	-----	40	-----	29	5	6	-----	40
Iredell.....	56	23	-----	74	5	57	1	21	-----	79
Jackson.....	87	13	-----	94	6	62	3	35	-----	100
Johnston.....	75	40	-----	114	1	114	-----	-----	1	115
Jones.....	25	38	-----	58	5	46	7	10	-----	63

STATEMENT C—Continued

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Lee.....	18	12		29	1	25	5			30
Lenoir.....	89	101		168	22	121	45	24		190
Lincoln.....	61	8		67	2	45	9	13	2	69
Macon.....	103	11		109	5	77	6	31		114
Madison.....	51	3		53	1	38	8	6	2	54
Martin.....	41	74		111	4	68	23	24		115
McDowell.....	103	20		113	10	72	33	15	3	123
Mecklenburg.....	306	321		574	53	410	116	99	2	627
Mitchell.....	161	4		152	13	106	21	38		165
Montgomery.....	23	7		29	1	9	1	20		30
Moore.....	22	42		61	3	41	8	15		64
Nash.....	127	116		226	17	116	30	96	1	243
New Hanover.....	58	180		220	18	160	77	1		238
Northampton.....	62	91		148	5	109	29	15		153
Onslow.....	90	71		158	3	101	32	28		161
Orange.....	107	66		168	5	127	18	26	2	173
Pamlico.....	28	15		41	2	29	11	3		43
Pasquotank.....	24	31		53	2	31	5	18	1	55
Pender.....	64	97		152	9	118	28	14	1	161
Perquimans.....	14	4		16	2	10	8			18
Person.....	92	97	2	188	3	157	17	17		191
Pitt.....	107	114		208	13	121	53	47		221
Polk.....	27	6		29	4	21	3	9		33
Randolph.....	175	60		226	9	138	24	73		235
Richmond.....	52	61		112	1	81	8	22	2	113
Robeson.....	200	106	126	410	22	208	41	183		432
Rockingham.....	152	81		209	24	124	61	48		233
Rowan.....	139	57		186	10	121	32	39	4	196
Rutherford.....	122	26		143	5	137	11			148
Sampson.....	97	38	1	134	2	93	28	15		136
Scotland.....	17	10	2	29		26	2	1		29
Stanly.....	33	17		48	2	49	1			50
Stokes.....	91	16		100	7	65	26	16		107
Surry.....	104	14		113	5	92	26			118
Swain.....	180	8	36	210	14	159	26	39		224
Transylvania.....	66	4		66	4	47	4	19		70
Tyrrell.....	3	4		7		2		5		7
Union.....	31	21		50	2	45	2	5		52
Vance.....	98	31		121	8	104	21	4		129
Wake.....	333	345		649	29	380	114	184		678
Warren.....	11	28		38	1	27	10	2		39
Washington.....	15	17		29	3	21	9	2		32
Watauga.....	123	14		130	7	99	17	19	2	137
Wayne.....	71	110		165	16	107	21	51	2	181
Wilkes.....	602	41		591	52	300	62	267	14	643
Wilson.....	151	194		324	21	128	32	185		345
Yadkin.....	71	12		80	3	71	6	5	1	83
Yancey.....	202	2		196	8	122	15	67		204
Total.....	9,668	5,343	170	14,314	867	9,893	2,301	2,906	81	15,181

STATEMENT D

THE FOLLOWING STATEMENT SHOWS THE OFFENSES WITH WHICH DEFENDANTS WERE CHARGED IN THE SUPERIOR COURTS OF THE STATE DURING THE FALL TERM, 1931, AND SPRING TERM, 1932

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burglary—First Degree	Burglary—Second Degree
Alamance.....					1	6	3	4					5			
Alexander.....						1		5					1			1
Alleghany.....	1					3										
Anson.....		3						1				1	2			1
Ashe.....							1	19	1					1		
Avery.....	3				2			5				1				
Beaufort.....	6			4		10	2	4		2		1	3		2	1
Bertie.....	1									4			2			
Bladen.....				1	4		1	3								
Brunswick.....		1				6		1								
Buncombe.....	3	1			1	4	9	39	3	2		4	52	2	1	2
Burke.....	2			2	2			4								
Cabarrus.....	1					7	3	29				1	39			3
Caldwell.....	1						2	4					13			
Camden.....						1		1								
Carteret.....						1	1	3					2			
Caswell.....	4					6	1	11		1						
Catawba.....					2	2	2	6				1	21		1	
Chatham.....						1	1									
Cherokee.....	3			3		4	1	26	1	1			1			

STATEMENT D—Continued

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burgery	Burglary—First Degree	Burglary—Second Degree
Johnston.....						4	2	15			2					1
Jones.....						1		16				3				
Lee.....	1					5			1			8				
Lenoir.....	1	1			1	2	2	14	1			13				
Lincoln.....	1					2	5	6	1		1	9				
Macon.....	2		2	3			4	12	1							1
Madison.....							1	15				1				
Martin.....	1			2		4	5	16	1							1
McDowell.....	1			7	1	4	1	6			4	12				
Mecklenburg.....	4				3	13	5	77	3		2	18	1			2
Mitchell.....	5	1				1	4	15	1		1	5				
Montgomery.....	3					1		5								
Moore.....	1				1			4	1		1	25				
Nash.....	2			7		6	8	21	2		2	14				
New Hanover.....	7				1	1	6	30								1
Northampton.....				13		7	1	20	1			8				
Onslow.....	2			2		1	1	21	1		1	4				
Orange.....						9	4	23	1			4				
Pamlico.....	1					3	3	5	2							
Pasquotank.....						4	2	3			1					

STATEMENT D—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Alamance.....											4	1		3			1
Alexander.....		1												1			
Allegany.....		2										1					
Anson.....								1			3	1		2			
Ashe.....	1	3							4	1							3
Avery.....	2																
Beaufort.....							1	2			3	1		1	4		
Bertie.....																	
Bladen.....	1	1						1									
Brunswick.....	1	1						1			2						
Buncombe.....		1			2	1					11	2	2	2	1		2
Burke.....													1	1			
Cabarrus.....		4									1		1				2
Caldwell.....		1					2				1				6		3
Canden.....														1			
Carteret.....											1						
Caswell.....		5						2						1			1
Catawba.....											2			1			2
Chatham.....	1																5
Cherokee.....		10							7								3

STATEMENT D—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Johnston.....																	
Jones.....		4					2										
Lee.....								1	1								2
Lenoir.....	2	2				2	1				7			4	1		
Lincoln.....					3					1	1			2			1
Macon.....	3	4						1	1			2		2			
Madison.....		3										1		1	1		
Martin.....		3				1						1		2	2		
McDowell.....		1					7										
Mecklenburg.....		10				1	1	1	1		8		1	5			1
Mitchell.....	1	4			2		2				3	4		10			
Montgomery.....	1														1		
Moore.....							1				1			1			
Nash.....	2	2						2			3			6	2		2
New Hanover.....		5						1			4	1		3			1
Northampton.....	1	1						1	5		1			1			2
Onslow.....		2							6					2		3	
Orange.....		2									1	3		1			
Pamlico.....	2	1			3						1						
Pasquotank.....		1									1						

STATEMENT D—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Alamance.....	3	—	—	—	20	—	2	35	—	—	2	1	—	—	3	1	—	—
Alexander.....	2	—	—	—	—	—	1	8	1	—	1	—	—	—	1	1	—	—
Alleghany.....	—	—	—	—	—	—	—	7	—	—	—	—	—	—	—	—	—	—
Anson.....	11	—	—	—	8	—	—	13	—	—	1	—	—	—	2	—	—	—
Ashe.....	—	—	—	—	4	—	1	21	—	—	—	—	—	—	—	—	1	—
Avery.....	1	2	7	—	1	—	—	22	—	—	—	—	—	—	4	—	1	—
Beaufort.....	2	—	—	—	—	—	3	11	—	—	2	3	1	—	—	—	—	—
Bertie.....	—	—	—	—	—	—	—	10	—	—	1	—	—	—	2	—	—	—
Bladen.....	—	—	—	—	—	—	—	7	—	—	—	—	—	—	—	—	—	—
Brunswick.....	—	—	—	—	—	—	—	4	—	—	—	1	—	—	1	—	—	4
Buncombe.....	7	—	1	—	24	—	2	90	—	—	1	4	—	—	18	—	—	—
Burke.....	3	—	—	—	—	—	—	15	—	—	—	—	—	—	3	—	—	—
Cabarrus.....	6	—	—	—	—	—	—	36	—	2	—	6	—	—	3	—	—	—
Caldwell.....	7	—	—	—	—	—	—	17	—	—	3	—	—	—	3	1	—	—
Camden.....	—	—	—	—	—	—	—	—	—	—	—	2	—	—	—	—	—	—
Carteret.....	—	—	—	—	—	—	—	17	—	—	1	—	—	—	—	—	—	—
Caswell.....	1	—	—	—	7	—	—	7	—	—	—	7	4	—	—	—	—	—
Catawba.....	3	—	—	—	—	—	—	14	—	—	5	2	—	—	1	—	—	—
Chatham.....	4	—	3	—	3	—	—	6	—	—	2	—	—	—	3	—	—	3
Cherokee.....	1	2	—	—	8	—	2	15	—	—	1	4	—	—	5	—	3	—

[illegible]

STATEMENT D—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Johnston.....	4	2	—	—	32	—	1	28	—	—	1	1	—	—	3	—	—	—
Jones.....	—	2	—	—	—	—	—	10	—	—	3	—	—	—	—	1	—	—
Lee.....	2	—	—	—	—	—	—	1	—	—	1	1	—	—	3	—	—	—
Lenoir.....	5	4	3	—	3	1	—	47	—	—	5	4	—	—	—	—	—	—
Lincoln.....	2	2	—	—	—	—	—	11	—	—	3	6	—	—	—	—	—	—
Macon.....	3	—	—	—	5	—	—	18	—	—	1	6	—	—	—	—	—	—
Madison.....	3	—	—	—	2	—	—	7	—	—	2	1	—	—	4	—	—	—
Martin.....	3	1	—	—	23	—	—	18	2	—	1	5	—	—	—	1	—	—
McDowell.....	—	1	3	—	—	—	4	26	—	—	3	2	—	—	1	—	—	—
Mecklenburg.....	19	1	4	—	33	—	9	127	—	—	22	29	1	—	9	—	—	—
Mitchell.....	1	5	—	—	—	—	2	17	—	—	—	2	—	—	1	—	—	—
Montgomery.....	—	—	—	1	—	—	—	5	—	—	—	—	—	—	2	—	—	—
Moore.....	5	—	—	—	—	1	—	7	—	—	1	1	—	—	2	—	—	—
Nash.....	4	—	18	—	17	—	—	43	1	—	6	8	—	—	5	1	—	—
New Hanover.....	6	—	—	—	17	—	—	57	—	—	13	12	—	—	1	—	1	—
Norhampton.....	—	2	—	—	4	—	—	29	—	—	1	—	—	—	1	—	—	—
Onslow.....	—	—	—	—	—	—	1	17	—	—	3	3	—	—	2	1	2	—
Orange.....	1	—	—	—	—	—	—	18	—	—	—	1	—	—	—	3	3	—
Pamlico.....	—	—	—	—	—	—	—	4	1	—	1	—	—	—	—	—	—	—
Pasquotank.....	1	—	—	—	2	—	—	4	—	—	—	—	—	—	1	—	—	—

Pender.....	6	8	1	1	25	14	4	242	516	44	7	276	40	27	5
Perquimans.....	2	12	2	1	1	1	1	5	1	7	1	3	1	1	---
Person.....	4	---	---	---	37	---	---	1	2	---	---	1	3	---	---
Pitt.....	---	---	---	---	60	---	---	1	3	---	1	4	---	---	---
Polk.....	---	---	8	---	1	---	---	1	---	---	---	---	---	---	---
Randolph.....	3	5	---	---	50	---	---	2	7	6	---	---	---	---	---
Richmond.....	10	1	---	---	16	---	---	1	6	3	---	---	2	---	---
Robeson.....	8	11	30	2	57	---	---	5	22	3	---	---	3	3	1
Rockingham.....	2	2	25	---	30	---	---	6	5	---	---	---	---	---	---
Rowan.....	2	1	1	4	33	---	---	4	8	2	2	6	1	---	---
Rutherford.....	4	4	---	---	6	---	---	---	4	1	---	2	1	---	---
Sampson.....	5	36	5	1	13	---	---	8	1	---	---	---	---	---	---
Scotland.....	1	---	---	---	1	---	---	1	---	---	1	2	1	---	---
Stanly.....	1	2	1	---	7	---	---	---	---	---	---	---	---	---	---
Stokes.....	2	2	---	1	15	---	---	4	2	---	---	5	---	---	---
Surry.....	2	---	3	---	16	---	---	6	8	1	---	3	---	1	---
Swain.....	6	8	---	---	23	---	---	---	3	---	---	1	---	---	---
Tennessee.....	1	---	2	---	14	---	---	---	2	---	---	2	---	---	---
Tyrrell.....	---	---	1	---	---	---	---	---	---	---	---	---	---	---	---
Union.....	4	---	---	1	8	---	---	---	---	---	---	4	---	---	---
Vance.....	5	---	7	---	41	---	---	---	4	---	---	3	---	---	---
Wake.....	14	4	87	9	127	1	---	6	20	---	---	9	1	---	---
Warren.....	4	---	---	---	7	---	---	3	---	---	---	---	---	---	---
Washington.....	2	---	---	---	3	---	---	1	---	---	---	1	---	---	---
Watauga.....	3	3	2	---	25	---	---	2	3	---	---	2	---	---	---
Wayne.....	9	3	20	1	37	---	---	2	7	---	---	3	1	---	---
Wilkes.....	10	16	14	2	60	---	---	---	19	---	---	7	---	2	---
Wilson.....	9	2	49	2	75	2	---	4	17	2	---	---	---	---	---
Yadkin.....	1	2	---	---	10	---	---	1	3	---	---	2	1	1	---
Yancey.....	6	---	1	---	23	---	---	---	2	---	---	---	---	---	---
Totals.....	337	134	108	6	638	15	69	2,605	14	4	242	516	44	27	5

STATEMENT D—Continued

Counties	Official Misconduct	Perjury	Poisoning	Prohibition Laws— Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws— Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Alamance.....	—	—	—	11	2	—	—	—	10	—	2	—	—	1	—	2	1	124
Alexander.....	—	—	—	4	—	—	—	—	—	—	2	—	—	—	—	—	4	35
Alleghany.....	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	15
Anson.....	—	—	—	3	—	—	—	—	—	—	1	—	7	—	—	4	5	70
Ashe.....	—	—	—	18	—	—	—	8	—	—	—	—	—	—	—	—	5	92
Avery.....	—	—	—	25	—	—	—	1	—	—	—	—	—	2	—	2	2	88
Beaufort.....	—	—	—	22	2	1	—	—	—	3	—	—	—	—	—	7	4	104
Bertie.....	—	1	—	1	—	—	1	—	2	—	—	1	1	1	—	—	2	30
Bladen.....	—	—	—	11	—	—	—	—	—	1	1	—	2	—	—	1	2	35
Brunswick.....	1	—	—	3	—	—	—	—	—	1	—	—	6	8	—	—	1	43
Buncombe.....	1	—	—	51	—	—	—	1	13	2	1	—	—	—	3	—	3	367
Burke.....	—	—	—	12	—	1	—	—	—	—	1	—	—	—	—	1	3	65
Cabarrus.....	—	—	—	66	—	1	1	—	—	—	—	—	—	1	—	2	3	218
Caldwell.....	1	—	—	17	—	—	—	—	—	3	—	—	—	—	—	—	2	87
Camden.....	—	—	—	—	—	—	—	4	5	—	—	—	1	—	—	—	—	15
Carteret.....	—	—	—	2	—	—	—	1	—	—	—	—	—	—	—	—	—	33
Caswell.....	—	—	—	53	—	—	—	3	—	—	—	—	—	4	—	2	—	120
Catawba.....	—	—	—	1	—	—	—	2	3	—	—	—	—	—	—	—	—	71
Chatham.....	4	—	—	—	—	—	1	—	2	—	—	—	13	1	—	—	—	52
Cherokee.....	2	—	—	69	2	—	—	2	2	—	1	—	—	—	—	—	2	179

STATEMENT D—Continued

Counties	Official Misdemeanor	Perjury	Poisoning	Prohibition Laws— Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws— Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Johnston.....	—	—	—	12	—	—	—	2	4	—	—	—	—	1	—	—	—	115
Jones.....	—	—	—	16	—	—	1	—	—	—	—	—	—	—	—	—	2	63
Lee.....	—	—	—	2	—	—	—	—	—	—	—	—	—	—	—	1	2	30
Lenoir.....	—	—	—	32	5	—	—	—	1	—	—	—	13	2	—	8	3	190
Lincoln.....	—	1	—	7	2	—	—	1	1	—	1	—	—	—	—	1	—	69
Macon.....	—	—	—	34	—	—	—	2	—	—	—	—	—	4	—	—	3	114
Madison.....	—	—	—	7	—	—	—	—	—	—	2	—	—	1	—	—	2	54
Martin.....	—	—	—	13	—	1	—	1	—	—	3	—	—	—	2	—	—	115
McDowell.....	—	—	—	37	—	—	—	—	—	—	—	—	1	—	—	—	—	123
Mecklenburg.....	—	—	—	70	1	—	—	6	34	—	1	—	81	2	1	6	12	627
Mitchell.....	—	—	—	59	2	—	—	—	3	—	3	1	—	3	—	7	—	165
Montgomery.....	—	—	—	3	—	—	—	—	1	3	—	—	—	—	—	—	2	30
Moore.....	—	1	—	4	—	—	—	—	2	—	—	—	—	—	—	—	2	64
Nash.....	—	—	—	32	4	—	—	1	6	—	—	—	—	2	—	5	9	243
New Hanover.....	—	—	—	23	—	—	—	—	16	—	—	—	29	—	—	—	2	238
Northampton.....	—	1	—	41	—	—	2	1	3	—	—	—	—	—	—	3	4	153
Onslow.....	—	—	—	64	—	—	—	—	—	—	2	—	6	—	—	10	4	161
Orange.....	—	—	—	77	—	—	—	—	3	—	1	—	3	1	—	1	8	173
Pamlico.....	—	—	—	11	—	—	—	—	—	—	—	—	6	—	—	—	—	43
Pasquotank.....	—	—	—	4	—	—	—	1	5	—	—	—	1	1	—	—	—	55

Pender.....	1	42				2	1	2	1	1	8	1	161
Perquimans.....		1											18
Person.....		72						1				9	191
Pitt.....	4	40						1				22	221
Polk.....		9					1	1					33
Randolph.....		74		2			4				1	8	235
Richmond.....		18										1	113
Robeson.....		68	2			2	2				16	18	432
Rockingham.....	1	56	4					1				3	233
Rowan.....		49					2	1				1	196
Rutherford.....		53	3				2					2	148
Sampson.....		9	1	2		1				1		5	136
Scotland.....		1										2	29
Stanly.....		7							1			2	50
Stokes.....		38				1				2		2	107
Surry.....		29					2	2				2	118
Swain.....		129	1						1	2	3	1	224
Tennessee.....		25				1	2					4	70
Tyrrell.....												4	7
Union.....	1	9										1	52
Vance.....		23		1		1			1	1	3	2	129
Wake.....	10	95	8	2	1		4	27	1	2	1	8	678
Warren.....										1	9	1	39
Washington.....		5							1			2	32
Watauga.....		58									4	2	137
Wayne.....		21	2			1				1	31		181
Wilkes.....	1	166	43	2			3	5		3	17	6	643
Wilson.....		59	3				1	8			4	14	345
Yadkin.....		31	7										83
Yancey.....		80	2			4	1	2		2	4	2	204
Totals.....	23	3374	116	21	33	86	273	8	78	14	413	309	15,181

DISPOSITION OF VIOLATIONS OF PROHIBITION LAW, IN THE SUPERIOR COURTS, 1931-1932

Convictions.....	2,336
Acquittals.....	441
Nolle Pros.....	573
Otherwise Disposed of.....	24
Total.....	3,374

STATEMENT C-1

THE FOLLOWING STATEMENT SHOWS CRIMINAL CASES DISPOSED OF IN COURTS BELOW THE
SUPERIOR COURT, REPORTING TO THIS DEPARTMENT, DURING THE FALL TERM,
1931, SPRING TERM, 1932

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alexander.....	49	16		65		55	5	5		65
Bertie.....	66	96		155	7	138	22		2	162
Brunswick.....	182	92		252	22	143	100	30	1	274
Buncombe.....	274	48		292	30	254	58	10		322
Cabarrus.....	509	110		598	21	615	2		2	619
Caldwell.....	395	46		412	29	319	81	41		441
Chatham.....	113	106		213	6	180	39			219
Chowan.....	52	78		124	6	82	43	5		130
Columbus.....	323	176	4	480	23	306	96	100	1	503
Craven.....	135	199		310	24	252	72	10		334
Cumberland.....	307	412		631	88	502	158	53	6	719
Davidson.....	527	175		656	46	604	87	11		702
Duplin.....	93	59		148	4	116	19	17		152
Franklin.....	99	112		201	10	151	55	5		211
Gaston.....	937	324		1,137	124	1,100	89	72		1,261
Gates.....	36	56		90	2	60	26	5	1	92
Halifax.....	359	360		651	68	537	142	40		719
Harnett.....	558	396	2	889	67	716	154	85	1	956
Haywood.....	773	88		798	63	756	85	18	2	861
Henderson.....	182	57		218	21	166	44	29		239
Iredell.....	62	24		79	7	82		4		86
Jackson.....	50	7	1	55	3	41	6	11		58
Lee.....	48	92		136	4	140				140
Lincoln.....	156	41		187	10	120	44	33		197
Madison.....	293	5		288	10	210	75	9	4	298
McDowell.....	511	40		515	36	442	64	42	3	551
Mecklenburg.....	1,853	1,297		2,712	438	3,113	33	4		3,150
Montgomery.....	88	52		133	7	71	41	25	3	140
Moore.....	189	246		380	55	325	46	55	9	435
Nash.....	128	179		290	17	227	61	19		307
Orange.....	25	16		41		35	4	2		41
Pamlico.....	51	39		86	4	66	13	11		90
Person.....	44	65		104	5	77	24	8		109
Polk.....	72	25		91	6	97				97
Richmond.....	246	150		368	28	302	73	13	8	396
Rockingham.....	329	463		705	87	721	67	2	2	792
Sampson.....	56	77		130	3	86	36	11		133
Surry.....	577	100		642	35	581	52	44		677
Tyrrell.....	35	16		50	1	39	8	4		51
Union.....	357	320		641	36	528	82	67		677
Vance.....	302	162		420	44	364	99	1		464
Wake.....	82	171		231	22	161	53	39		253
Washington.....	41	53		90	4	62	25	5	2	94
Wilson.....	244	296		512	28	345	105	90		540
Total.....	11,808	6,942	7	17,206	1,551	15,287	2,388	1,035	47	18,757

Chowan.....				14		12					6	
Clay.....												
Cleveland.....												
Columbus.....	4		2	19	9	66	1				4	
Craven.....	2			9	13	56						
Cumberland.....	1	1	3	123							3	
Currituck.....												
Dare.....												
Davidson.....	4			23	9	18						
Davie.....												
Duplin.....	4				1	25						
Durham.....												
Edgecombe.....												
Forsyth.....												
Franklin.....	2			8	4	35						
Gaston.....	13		15	33	48	72	6	1				
Gates.....	2		2	4	2	13						
Graham.....												
Granville.....												
Greene.....												
Gulford.....												
Halifax.....	20		8	83		28					3	
Harnett.....	12		25	45	16	132	1					
Haywood.....			29	54		1						
Henderson.....	4			12	2	36						
Hertford.....												
Hoke.....												
Hyde.....												
Iredell.....				1		7						
Jackson.....	3		5	1		3						

Chowan.....		5				1				1					2					3
Clay.....																				
Cleveland.....																				
Columbus.....	14	16				1	2	4	6						1	3	16			2
Craven.....	1	15				2	1	1	4						1	1	5			
Cumberland.....	1	32					2	3	1						1	2				
Currituck.....																				
Dare.....																				
Davidson.....		8													1					
Davie.....																				
Duplin.....								1	1								1			1
Durham.....																				
Edgecombe.....																				
Forsyth.....																				
Franklin.....		8						1	7								1			1
Gaston.....		9						1	4								2			
Gates.....		3						3	7											
Graham.....																				
Granville.....																				
Greene.....																				
Guilford.....																				
Halifax.....	1	11					7	3	2						3	87	2	1		1
Harnett.....	1	12				1		4	1							2	5	1		2
Haywood.....		9					2								1		1			
Henderson.....	1	9					7	1	2						1	9	1			3
Hertford.....																				
Hoke.....																				
Hyde.....																				
Iredell.....		3																1		
Jackson.....	3														2			1		1

STATEMENT D-1—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Johnston.....																	
Jones.....																	
Lee.....		7										4					
Lenoir.....																	
Lincoln.....		1			4		4										
Macon.....																	
Madison.....	1	21				1		3				4		3	11		2
Martin.....																	
McDowell.....	6	14					4	2	4			14		3	1		3
Mecklenburg.....		65				1	3	5	8	1	1	8			6		4
Mitchell.....																	
Montgomery.....	3						1	2	4			1			1		1
Moore.....	17						13	1	9			7		2			2
Nash.....		9					1		4			5					4
New Hanover.....																	
Northampton.....																	
Onslow.....																	
Orange.....																	
Pamlico.....																	
Pasquotank.....		1							1								

STATEMENT D-1—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Alamance.....																		
Alexander.....																		
Alleghany.....								13				2						
Anson.....																		
Ashe.....																		
Avery.....																		
Beaufort.....																		
Bertie.....		4			5		2	39				4						
Bladen.....																		
Brunswick.....	1	6	1					25			1	23				4		
Buncombe.....																		
Burke.....		1	1				5	35				30						
Cabarrus.....																		
Caldwell.....	1	14	6				11	59			10	77				3	1	
Camden.....												20				11		
Carteret.....																		
Caswell.....																		
Catawba.....																		
Chatham.....			1				4	27		1								
Cherokee.....												10				1		

Chowan.....	2	10					19				13		4	
Clay.....														
Cleveland.....														
Columbus.....	4	1		11		3	85	1	1		71		2	3
Craven.....		1				10	82				21			
Cumberland.....														
Currituck.....	1	7				4	117				65	2	12	1
Dare.....														
Davidson.....		16				3	35				71	16	3	
Davie.....														
Duplin.....														
Durham.....		5					25				24			
Edgecombe.....														
Forsyth.....														
Franklin.....	2	3					32				7			1
Gaston.....														
Gates.....	3					2	90				14	303		1
Graham.....						1	8				13			
Granville.....														
Greene.....														
Gulford.....														
Halifax.....	18	1				8	88				41		9	
Harnett.....	1	9		10		9	110				42		3	
Haywood.....	5	7					25	1	14		42	18		
Henderson.....	7	9				2	39	1			16	2		4
Hertford.....														
Hoke.....														
Hyde.....														
Iredell.....							17				2			
Jackson.....						1	4							

STATEMENT D-1—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Johnston.....																		
Jones.....							4	33				8						
Lee.....		1																
Lenoir.....																		
Lincoln.....		1					3	27				5						
Macon.....																		
Madison.....	1	10	2		3		5	25				11						
Martin.....																		
McDowell.....	1	14					2	33				36	1			1		
Mecklenburg.....		4	105				19	300	1			320	54					
Mitchell.....																		
Montgomery.....			3		4			19				4					1	
Moore.....	2	6					4	46			1	22				3		1
Nash.....		10	14				1	50				17				2		
New Hanover.....																		
Northampton.....																		
Onslow.....																		
Orange.....				2				3										
Pamlico.....								28	3			7						
Pasquotank.....												5						

[illegible]

[illegible]

DISPOSITION OF VIOLATIONS OF PROHIBITION LAW IN THE COURTS BELOW THE
SUPERIOR COURTS FALL TERM, 1931, SPRING TERM, 1932

Convictions.....	6,874
Acquittals.....	582
Nolle Pros.....	193
Otherwise Disposed of.....	7
Total.....	7,656

STATEMENT E

Comparative Statement as to Sex, Race, Judgment, etc. (Superior Courts)	From July 1, 1930 To July 1, 1931		From July 1, 1931 To July 1, 1932	
Number of Criminal Actions Disposed of.....		15,451		15,181
Males.....	14,545		14,314	
Females.....	902		867	
Corporations.....	4			
Total.....		15,451		15,181
White.....	9,605		9,668	
Colored.....	5,780		5,343	
Indian.....	62		170	
Corporations.....	4			
Total.....		15,451		15,181
Convictions, Including Submissions.....	10,433		9,893	
Acquittals.....	2,009		2,301	
Nolle Pros.....	2,899		2,906	
Otherwise Disposed of.....	110		81	
Total.....		15,451		15,181

STATEMENT E-1

Comparative Statement as to Sex, Race, Judgment, etc. (Courts below Superior Courts)	From July 1, 1930 To July 1, 1931		From July 1, 1931 To July 1, 1932	
Number of Criminal Actions Disposed of.....		12,019		18,757
Males.....	11,139		17,206	
Females.....	879		1,551	
Corporations.....	1			
Total.....		12,019		18,757
White.....	7,376		11,808	
Colored.....	4,634		6,942	
Indian.....	8		7	
Corporations.....	1			
Total.....		12,019		18,757
Convictions, Including Submissions.....	10,101		15,287	
Acquittals.....	1,323		2,388	
Nolle Pros.....	569		1,035	
Otherwise Disposed of.....	26		47	
Total.....		12,019		18,757

STATEMENT F

Alphabetical List of Crimes (Superior Courts)	From July 1, 1930 To July 1, 1931	From July 1, 1931 To July 1, 1932
Abandonment.....	185	189
Abduction.....	16	28
Abortion.....	8	9
Affray.....	150	141
Arson.....	54	36
Assault and Battery.....	463	357
Assault on Female.....	146	209
A. D. W.....	1,185	1,381
Assault with Intent to Kill.....	135	110
Assault with Intent to Rape.....	71	81
Banking Laws—Violation.....	16	35
Bigamy.....	49	45
Breaking and Entering.....	673	863
Bribery.....	2	6
Buggery.....	12	14
Burglary—First Degree.....	2	3
Burglary—Second Degree.....	42	48
Burning other than Arson.....	43	42
C. C. W.....	311	297
Compounding Felony.....		
Concealing Birth of Child.....	2	9
Conspiracy.....	10	32
Cruelty to Animals.....	22	14
Disorderly House.....	72	58
Disposing Mortgaged Property.....	85	59
Disturbing Meetings.....	74	71
Election Laws—Violation.....	3	4
Embezzlement.....	140	228
Escape.....	60	48
Failure to List Taxes.....	3	6
False Pretense.....	146	192
Fish and Game Laws—Violation.....	73	54
Food and Drug Laws—Violation.....	3	
Forcible Trespass.....	182	119
Forgery.....	378	337
Fornication and Adultery.....	148	134
Gambling or Lottery.....	193	168
Health Laws—Violation.....	2	6
Housebreaking.....	626	638
Incest.....	25	15
Injury to Property.....	60	69
Larceny and Receiving.....	2,987	2,605
License, Doing Business Without.....	10	14
License, Practicing Profession Without.....	5	4
Manslaughter.....	162	242
Motor Vehicle Laws—Violation.....	424	516
Municipal Ordinances.....	20	44
Murder—First Degree.....	8	7
Murder—Second Degree.....	269	276
Non-Support.....	58	40
Nuisance.....	21	27
Obstructing Public Highway.....	4	5
Official Misconduct.....	19	23
Perjury.....	31	32

STATEMENT F—Continued

Alphabetical List of Crimes (Superior Courts)	From July 1, 1930 To July 1, 1931	From July 1, 1931 To July 1, 1932
Poisoning.....		1
Prohibition Laws—Violation.....	3,775	3,374
Prostitution.....	95	116
Rape.....	19	21
Removing Crop.....	17	33
Resisting Officer.....	79	86
Robbery.....	217	273
School Laws—Violation.....	3	8
Seduction.....	64	78
Slander.....	15	14
Storebreaking.....	442	413
Trespass.....	105	115
Vagrancy.....	42	26
Worthless Checks.....	286	309
Miscellaneous.....	404	324
Total.....	15,451	15,181

STATEMENT F-1

Alphabetical List of Crimes (Courts below Superior Court)	From July 1, 1930 To July 1, 1931	From July 1, 1931 To July 1, 1932
Abandonment.....	105	175
Abduction.....	9	4
Abortion.....	3	1
Affray.....	179	300
Arson.....		2
Assault and Battery.....	690	1,256
Assault on Female.....	140	237
A. D. W.....	725	1,319
Assault with Intent to Kill.....	9	24
Assault with Intent to Rape.....	2	6
Banking Laws—Violation.....		2
Bigamy.....		
Breaking and Entering.....	11	55
Bribery.....		
Buggery.....		
Burglary—First Degree.....		
Burglary—Second Degree.....		1
Burning other than Arson.....	13	39
C. C. W.....	328	427
Compounding Felony.....		
Concealing Birth of Child.....		
Conspiracy.....		4
Cruelty to Animals.....	18	13
Disorderly House.....	18	64
Disposing Mortgaged Property.....	40	58
Disturbing Meetings.....	67	100
Election Laws—Violation.....		1
Embezzlement.....	6	13
Escape.....	39	87
Failure to List Taxes.....	44	94
False Pretense.....	30	39
Fish and Game Laws—Violation.....	128	101
Food and Drug Laws—Violation.....		
Forcible Trespass.....	46	76
Forgery.....	8	9
Fornication and Adultery.....	97	175
Gambling or Lottery.....	332	376
Health Laws—Violation.....	4	2
Housebreaking.....	11	43
Incest.....	1	1
Injury to Property.....	49	127
Larceny and Receiving.....	1,156	2,063
License, Doing Business Without.....	22	16
License, Practicing Profession Without.....	3	17
Manslaughter.....	2	23
Motor Vehicle Laws—Violation.....	877	1,372
Municipal Ordinances.....	44	446
Murder—First Degree.....		
Murder—Second Degree.....	1	2
Non-Support.....	61	70
Nuisance.....	7	77
Obstructing Public Highway.....	11	2
Official Misconduct.....	1	1
Perjury.....		3

STATEMENT F-1—Continued

Alphabetical List of Crimes (Courts below Superior Court)	From July 1, 1930 To July 1, 1931	From July 1, 1931 To July 1, 1932
Poisoning.....	1	
Prohibition Laws—Violation.....	5,338	7,656
Prostitution.....	79	136
Rape.....	2	2
Removing Crop.....	37	48
Resisting Officer.....	49	84
Robbery.....	7	18
School Laws—Violation.....	2	12
Seduction.....	9	18
Slander.....	12	26
Storebreaking.....	6	4
Trespass.....	172	267
Vagrancy.....	40	63
Worthless Checks.....	409	389
Miscellaneous.....	519	711
Total.....	12,019	18,757

Fees Transmitted by Attorney General to State Treasurer since February Term, 1930, Through February Term, 1932

State v. Charles.....	\$ 10.00
State v. Hoffman, et. al.....	40.00
State v. Lassiter.....	10.00
State v. Lackey.....	10.00
State v. Wishon.....	10.00
State v. Cornett.....	20.00
State v. Fenton McLamb.....	10.00
State v. Ellis (Frick).....	10.00
State v. Hefner and Warren.....	30.00
State v. Hall and Reynolds.....	20.00
State v. Day.....	10.00
State v. Burke.....	10.00
State v. Burns.....	10.00
State v. Jake Brown.....	10.00
State v. Jake Brown.....	10.00
State v. Roberson.....	10.00
State v. McBryde.....	20.00
State v. Lewis Doyle.....	10.00
State v. Harwell.....	10.00
State v. Staley.....	10.00
State v. Levy.....	10.00
State v. Harris, et al.....	20.00
State v. Sizemore.....	20.00
State v. Caudle.....	10.00
State v. Scoggins.....	10.00
State v. Scoggins.....	10.00
State v. Rose.....	10.00
State v. Uzzell.....	10.00
State v. Stedman, et al.....	20.00
State v. Beal.....	70.00
State v. Fields.....	10.00
State v. Lamm.....	10.00
State v. Oakes.....	10.00
State v. Casey.....	10.00
State v. Combs and Wells.....	20.00
State v. Arnold.....	20.00
State v. Lathinghouse.....	10.00
State v. Turner.....	10.00
State v. Kiger.....	10.00
State v. Jones.....	10.00
State v. Ritter.....	20.00
State v. Allison.....	10.00
State v. Brewer.....	10.00
State v. Durham.....	10.00
State v. Mack Rhodes.....	10.00
State v. Lancaster.....	10.00
State v. Morrison.....	10.00
State v. McKay.....	10.00
State v. Cain.....	10.00
State v. Fleming.....	10.00
State v. E. H. Smith.....	10.00
State v. Simmerson.....	10.00
Clark v. Maxwell, Commissioner (U. S. Supreme Court).....	20.00
Tea Co. v. Maxwell, Commissioner (U. S. Supreme Court).....	20.00
Total.....	\$ 760.00

OPINIONS TO THE GOVERNOR, EXECUTIVE COUNSEL, DIRECTOR OF PERSONNEL, AND DIVISION OF PURCHASE AND CONTRACT

NATIONAL GUARD—PAID DURING ENCAMPMENT

26 July, 1930.

This morning, General Metts informs me that you want an opinion from me with respect to C. S. 6869:

"All officers and employees of the State who shall be members of the National Guard or Naval Militia shall be entitled to leaves of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or Coast-Guard defense training ordered or authorized under the provisions of this chapter."

You will find opinion of this office on that subject on page 107, Biennial Report for 1926-28. The language of the section referred to is clear that members of the National Guard or Naval Militia, who are officers or employees of the State may attend the training period with their respective organizations, without loss of pay or time. This, of course, means that such officers and employees of the State, while so attending a training period of the National Guard, are entitled to their regular pay, as such officer or employee, from the State and, also, to the vacation period usually allowed State officers and employees. It necessarily means that the time, thus taken by such officer or employee attending the camps of the National Guard, for training purposes, should not be charged against them as part, or whole, of their vacation period.

PARDONS—CONDITIONAL PAROLES

1 August, 1930.

You ask the opinion of this office with respect to your powers and duties in regard to paroles. Constitution, Article III, section 6, is as follows:

"*Reprieves, commutations, and pardons.* The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall biennially communicate to the General Assembly each case of reprieve, commutation, or pardon granted, stating the name of each convict, the crime for which he was convicted, the sentence and its date, the date of commutation, pardon, or reprieve, and the reasons therefor."

You will observe that there is no reference here to paroles. In *State v. Yates*, 183 N. C., 753, the Court held that the term "parole" imports a conditional pardon. These paroles or conditional pardons may be granted by the Governor, subject to the limitation that the conditions imposed must

not be illegal, immoral, or impossible of performance. It was in that case held that when a parole or conditional pardon is granted by the Governor, the prisoner's breach of such conditions voids the parole and cancels his further right to immunity from punishment.

In that case the prisoner was paroled "upon condition of good behavior and remaining a law abiding citizen." After the expiration of the time for which he had been sentenced, the parole was revoked and the Governor directed the sheriff to take and recommit the prisoner in order that he might serve the remainder of his term. The Court held that, the prisoner having accepted the parole upon these conditions, he might be so rearrested and required to complete the term for which he had been sentenced. That this may be done was directly set up by statute, C. S. 7756.

By C. S. 7643, the statute empowers the Governor, in cases where a pardon may be issued, to grant paroles or conditional pardons "subject to such conditions, restrictions and limitations as he considers proper and necessary." C. S. 7644 and 7645 contain statutory regulations of the Governor's duties with respect to recapture and recommitment of prisoners who have violated the terms of their parole or conditional pardon.

A parole or conditional pardon may, then, be granted upon condition that the prisoner shall be of good behavior and not violate the law. It may be expressed in these terms without limitation as to time. It may also be granted upon these conditions, limiting the time within which they shall remain obligatory upon him, the date of such limitation to be set out in the parole when granted.

EXECUTIVE AND JUDICIAL DEPARTMENTS

4 December, 1930.

I am in receipt of your letter of December 2 with enclosures—letter of Major E. P. Costen to General Metts and of General Metts to Governor Gardner. The correspondence relates to criticism by Judge Oglesby and Judge Sink, of persons presenting certificates of contributing membership in the National Guard as a basis of exemption from jury service.

It is absolutely impossible for the Governor to control criticism of this nature expressed by Superior Court Judges. Within his sphere, a Judge is superior to the Governor or any one else. The Executive Department has no power to control conduct of courts by a Judge. The Governor has no power to remove a Judge and none to suggest manner in which a Judge shall perform his duties. For high crimes and misdemeanors, a Judge may be impeached, but that power rests in the General Assembly. Upon a concurrent resolution, adopted by two-thirds vote of both houses of the General Assembly, a Judge may be removed for mental or physical inability.

The lack of power on the part of Executive officers to control activities of Judicial officers is founded upon the general principle expressed in Article I, Section 8, of the Constitution:

"The legislative, executive and supreme judicial powers of the government ought to be forever separate and distinct from each other."

I cannot advise that the Governor has any power to control, or suggest any means by which he might limit, occurrences of the kind described in the letters of General Metts and Major Costen.

SHERIFF—REMOVAL FROM OFFICE—POWER OF GOVERNOR

3 June, 1931.

You propound to this office the following questions:

When the sheriff of a county refuses to serve process, what authority, if any, has the Governor to act in such matter?

Has he power to remove the sheriff or appoint some one to act in his place?

To both of these questions we answer "No."

Among the authorities, powers and duties of the Governor, defined in C. S. Section 7636, is the following: He is to see that all offices are filled and the duties thereof performed, or in default thereof, apply such remedy as the law allows and if the remedy is imperfect, to acquaint the General Assembly therewith.

C. S. Section 3936 provides a penalty of \$100 for the failure or neglect of the sheriff to serve process delivered to him for service. It is collected summarily in the court to which the process is returnable.

C. S. Section 4384 permits the sheriff to be indicted for willful failure to discharge any of the duties of his office. The crime itself is declared to be a misdemeanor. He is also made guilty of a misdemeanor under Section 4396 for failure to return process.

C. S. Section 3928 declares: "If any sheriff shall be convicted of a misdemeanor in office, the court may at its discretion, as a part of his punishment, remove him from office."

There is still another provision of the statute which permits the court upon petition to remove a sheriff for any willful refusal to perform the duties of his office, C. S. Sections 3208 to 3212, inclusive.

We have thus stated to you the grounds upon which a sheriff may be removed and the tribunal which is to remove him under proven circumstances. We can find no authority any where in the statute for the Governor to remove any sheriff for willful failure to perform his duties.

ADJUTANT GENERAL'S DEPARTMENT; PAYMENT, COMPENSATION AWARD

17 July, 1931.

I have a memorandum from your office of July 15, together with letter from General Metts of July 14, relating to payment of awards by Industrial Commission against the Adjutant General's Department and in favor of certain soldiers. The question is asked as to whether these awards may be paid out of the contingency and emergency appropriation.

I call your attention to Budget Memorandum No. 132 of May 9, 1929, in which notice was given that the State would be a self-insurer under the Workmen's Compensation Act. Paragraph 4 of that memorandum is as follows:

"It was also decided at the same meeting that compensation as would accrue would be paid out of the appropriation or funds of each department and institution, in which such claims arose, and that transfers as would be necessary will be authorized to provide the availability. Under any extraordinary condition and compensation accruing to an amount larger than may be paid out of any particular appropriation, resort may be had to the Contingency and Emergency Appropriation."

It will thus be seen that at that time it was decided that departments and agencies should pay for compensable injuries out of their appropriation, or payment would be made in extraordinary circumstances out of the contingency and emergency fund. Of course, the effort should be made to make the payment out of the appropriation to the department or agency. As to whether a particular payment may be made out of the contingency and emergency appropriation, that is a matter in each case for the determination of the Governor and Council of State.

COMMISSIONER OF LABOR—APPROVAL OF WARRANTS

15 January, 1932.

I am this morning in receipt of your letter of yesterday, sending letter of Mr. E. F. Carter, and certain correspondence submitted therewith. I have been very glad to go into the matter with the view of aiding in the adjustment between Mr. Grist, Commissioner of Labor, and Mr. Carter, Director of the Division of Standards and Inspections.

A few days ago Mr. Carter came to me about the matter. This morning I have discussed it quite fully with Mr. Grist. From these interviews, previous ones, and material submitted, it appears that there has been considerable controversy between the head of this Department and the Director of this Division.

Under Section 6(b), Chapter 312, Public Laws of 1931, provision is made for making of rules and regulations governing the activities of the several divisions. This power is conferred upon the Commissioner of Labor by said subsection. The rules and regulations are to be subject to your approval. Both Mr. Grist and Mr. Carter in the conversations I have had with them contend that each has sought to coöperate with the other in the making of these rules and regulations, and each contends that the other has failed in this respect. Here, then, is a misunderstanding which needs to be cleared up, but which is somewhat aside from the immediate needs with respect to the unpaid invoices submitted by Mr. Carter.

With respect to these obligations, Mr. Grist takes the position that they were all incurred by Mr. Carter for his Division without purchase order or previous approval by Mr. Grist. He is unwilling to issue vouchers for payment of expenses and purchases unless they have previously been authorized by him.

The State Auditor approves warrants only upon request from the head of a Department. Under Section 5 of the Act, Chapter 312, Public Laws of 1931, Mr. Grist is administrative head of the Department of Labor. The act is

rather confusing, but it is apparent that there can be no gainsaying of that legal situation and of the other fact, that the Division of Standards and Inspections is a part of the Department.

I am of opinion that Mr. Grist is correct in his contention that he should have opportunity to approve purchase orders and expenditures ahead of incurring them. I am likewise of opinion that request for allotment out of the appropriation made to the Department of Labor for the Division of Standards and Inspections—Public Laws of 1931, Chapter 429, Section 1 (10.3), should go through the head of the Department.

Mr. Grist takes the position that it would be illegal for him to approve warrants for such purchases and expenditures unless they had been submitted to him ahead of incurring them, for his consideration and authorization.

It seems to me that the present difficulties can, and should, be adjusted by submission to Mr. Grist, the head of the Department, of request for purchases and expenditures for the Division of Standards and Inspections. I think if it is understood that this will be done in the future, that Mr. Grist will then go through this list of obligations with the view to approving them if he reaches the conclusion that they have been properly incurred and the indebtedness properly exists. I would certainly advise him to do that, and he tentatively this morning expressed willingness to do this.

Copies of this letter are being sent Mr. Grist and Mr. Carter. The enclosures are returned.

If I can aid further, I shall be very glad to do so. Quite frequently these matters can be handled by seeking adjustments of this nature, and I am very glad to be used in that capacity at any time.

DIRECTOR OF PERSONNEL; ANALYSIS OF ACT ESTABLISHING

27 January, 1932.

In compliance with your request this morning, I undertake to analyze the act establishing a Director of Personnel, Chapter 277, Public Laws of 1931, as it relates to the duties of various officials having connection with the setting up of salaries and wages for subordinates and employees in the State departments, bureaus and commissions.

The work is to be done in the first stages by the Director of Personnel, in connection with the heads of the various departments. Section 4 provides that the Director of Personnel, "with the approval of the Advisory Budget Commission (shall) fix, establish and classify a standard of salaries and wages, etc." Section 7 provides that the Director of Personnel shall keep informed from time to time as to the changes and the needs of personal service in such departments, bureaus and commissions, reconsider the report theretofore made, "and with the approval of the Advisory Budget Commission make changes therein in accordance with his findings."

I think it clear that the results of the survey and changes in salaries of subordinates and employees of the departments, bureaus and commissions of the State now being conducted by the Director of Personnel are subject to the approval of the Advisory Budget Commission before being put into

effect. Under Section 6 the changes in the salary schedule go into effect on the first day "of the next month beginning not less than thirty days subsequent to the reception of such report" by the head of the department.

It is not necessary that the heads of departments be heard by the Advisory Budget Commission before that body gives its approval to the report of the Director of Personnel. However, Section 11 does contemplate that the heads of departments may be heard at that time, or they may be heard even after approval by the Advisory Budget Commission. Section 11 thus gives the head of the department opportunity at one stage or another to be heard if he desires to present evidence to the Advisory Budget Commission with respect to salaries fixed in his department. The fact that this appeal is provided for in Section 11 does not at all alter the meaning of sections 4 and 7, which specifically require approval by the Advisory Budget Commission of these salary changes.

SALARIES—EXECUTIVE COUNSEL; ADJUTANT GENERAL; STATE LIBRARIAN;
COMMISSIONER PUBLIC WELFARE

27, January, 1932.

I undertake to answer the several inquiries submitted to me by you over the telephone this morning, as follows:

The position of Executive Counsel was created by Chapter 147, Public Laws of 1929. By Section 3 of the Act the Governor was authorized to fix the salary not to exceed that paid or allowed to a Superior Court Judge. The Executive Counsel is not the head of a department, bureau or commission, but a subordinate employee in the Governor's office.

By Section 21½ of the Appropriation Act of 1931, Chapter 429, the salary of the Executive Counsel was placed at \$5,000. That Act was ratified May 27, 1931. Chapter 277, Public Laws of 1931, confers upon the Director of Personnel, subject to approval by the Advisory Budget Commission, power to fix the salaries of subordinate employees of the various departments, bureaus and commissions of the State. That Act was ratified April 15, 1931.

In 1925 this office held that the Salary and Wage Commission had power to fix the salaries and wages of subordinate employees in the executive and administrative departments, notwithstanding the existence of statutes with respect to such salaries in particular instances and regardless of whether such statutes were passed before or after the ratification of the Salary and Wage Commission Act. The two statutes—the Salary and Wage Commission Act of 1925 and the Personnel Act of 1931—are substantially similar in the scope of the powers conferred in this respect. It follows, then, that the salary of the Executive Counsel is subject to control by the Director of Personnel upon approval by the Advisory Budget Commission, as are the salaries and wages of other subordinate employees in the various State departments.

The Adjutant General is the head of a department. By C. S. 3877, as amended, his salary was placed at \$4,500. As he is not an elective officer, his salary was subject to the 10 per cent cut authorized by Section 20 of the Appropriation Act of 1931. As he is the head of a department, and

not a subordinate employee, his salary is not under the control of the Director of Personnel under any authority conferred by Chapter 277, Public Laws of 1931. There is no statute authorizing a reduction of the salary of the Adjutant General by the Governor, the Advisory Budget Commission or any other public authority except as contained in section 20 of the appropriation act of 1931. (I enclose opinion of this office on the subject given Mr. Dunlap June 17, 1931.)

The State Librarian is the head of a department. Her salary is fixed by C. S. 3876, as amended. As she is not an elective officer, her salary was subject to the 10 per cent cut authorized by Section 20 of the Appropriation Act of 1931. Since she is the head of a department, her salary is not within the control of the Director of Personnel under Chapter 277, Public Laws of 1931. There is no statute authorizing a reduction in her salary by the Governor, the Advisory Budget Commission or other public authority except as contained in Section 20 of the Appropriation Act of 1931.

The Commissioner of Public Welfare is the head of a department. There is no statute specifically fixing her salary. By C. S. 5006-8 the State Board of Charities and Public Welfare is given the power "to employ a trained investigator of public service problems who shall be known as Commissioner of Public Welfare." It has been heretofore assumed that the State Board of Charities and Public Welfare has the power to fix the salary of this officer under the language quoted. In the absence of other legislative action, the exercise of such power by that Board seems to be justified.

As the Commissioner of Public Welfare is not an elective officer, her salary was subject to the 10 per cent cut authorized by Section 20 of the Appropriation Act of 1931. As she is the head of a department, and not a subordinate employee, her salary is not under the control of the Director of Personnel under authority conferred by Chapter 277, Public Laws of 1931. There is no statute authorizing a reduction of the salary of the Commissioner of Public Welfare by the Governor, the Advisory Budget Commission or any other public authority except as contained in Section 20 of the Appropriation Act of 1931, or possibly as indicated under C. S. 5006-8.

I advise, then, that the salaries of the Adjutant General, the State Librarian and the Commissioner of Public Welfare are not subject to further reduction, assuming that they have been reduced 10 per cent under authority contained in Section 20 of the Appropriation Act of 1931, except as indicated with respect to the Commissioner of Public Welfare.

SALARY—COMMISSIONER VETERANS LOAN FUND

28 January, 1932.

I answer your telephone inquiry of this morning, with respect to salary of the Commissioner of the Veterans Loan Fund, as follows:

The World War Veterans Loan Fund was established by a vote of the people under Chapter 155, Public Laws of 1925. The constitutionality of issuance of bonds under the act was sustained in *Hinton v. State Treasurer*, 193 N. C., 496. An additional and similar fund was established under the provisions of Chapter 298, Public Laws of 1929.

Section 7 of the Act provides for a Board of Advisers upon whom are conferred certain rather strictly limited duties in the administration of the Act. Provision is made for the selection by this Board of Advisers of a commissioner of the Veterans Loan Fund. He holds his office at the will of the Board, and "shall receive an annual salary payable monthly of \$3,500."

The Commissioner of the Veterans Loan Fund is the head of a department, or commission. As stated, his salary was fixed in Section 7 of Chapter 155, Public Laws of 1925, at \$3,500. As he is not an elective officer, his salary was subject to the 10 per cent cut authorized by Section 20 of the Appropriation Act of 1931. As he is the head of a department, and not a subordinate or employee, his salary is not under the control of the Director of Personnel under the authority conferred by Chapter 277, Public Laws of 1931. There is no statute authorizing the reduction of the salary of the Commissioner of the Veterans Loan Fund by the Governor, the Advisory Budget Commission or any other public authority except as contained in Section 20 of the Appropriation Act of 1931.

SALARIES—ASSISTANT TO DIRECTOR OF BUDGET; DIRECTOR OF PERSONNEL; COMMISSIONER OF REVENUE; DIRECTOR DIVISION OF PURCHASE & CONTRACT; DIRECTOR OF LOCAL GOVERNMENT; CHAIRMAN AND MEMBERS, INDUSTRIAL COMMISSION; COMMISSIONER OF BANKS; SECRETARY, STATE BOARD OF HEALTH; DIRECTOR, DEPARTMENT CONSERVATION & DEVELOPMENT; CHAIRMAN, HIGHWAY COMMISSION; STATE HIGHWAY ENGINEER.

30 January, 1932.

I answer the inquiry submitted in telephone conversation just had, as follows:

By Section 2 of Chapter 100, Public Laws of 1929, the Governor is authorized to appoint an Assistant to the Director of the Budget and to fix his salary. This Assistant is a subordinate and employee in the Budget Bureau. He is, therefore, subject to the provisions of Chapter 277, Public Laws of 1931, and his salary is to be fixed by the Director of Personnel, subject to the approval of the Advisory Budget Commission.

By Section 2 of Chapter 277, Public Laws of 1931, the Governor is authorized to fix the salary of the Director of Personnel, such salary not to exceed the sum of \$6,000. Regardless of whether he is, or is not, a subordinate and employee in the Governor's office, under general principles he, of course, would have no authority to fix his own salary; therefore, I advise that the Governor has the power to fix his salary.

Under Section 2 of Chapter 232, Public Laws of 1929, amending Section 6 of Chapter 40, Public Laws of 1921, the salary of the Commissioner of Revenue is to be fixed by the Governor with the approval of the Advisory Budget Commission.

By Section 14, Chapter 261, Public Laws of 1931, the salary of the Director of Purchase and Contract is to be fixed by the Governor, with the approval of the Advisory Budget Commission. In my opinion this officer is the head of a bureau and not a subordinate or employee therein; therefore,

the Governor has the right to fix his salary, subject to the approval of the Advisory Budget Commission.

By Section 7, Chapter 60, Public Laws of 1931, the salary of the Director of Local Government, as such Director and Secretary of the Local Government Commission, is to be fixed by the Governor with the approval of the Advisory Budget Commission. This officer is the head of a bureau or commission and therefore, not a subordinate employee.

By Section 9, Chapter 274, Public Laws of 1931, amending section 52.a of Chapter 120, Public Laws of 1929, the salaries of the Chairman and each member of the Industrial Commission are to be fixed by the Governor, subject to the approval of the Advisory Budget Commission.

By Section 6, Chapter 243, Public Laws of 1931, the salary of the Commissioner of Banks shall be fixed by the Advisory Budget Commission. This officer is the head of a department or commission and therefore, not a subordinate employee.

Under C. S. 7053, as amended, the Secretary of the State Board of Health shall receive such salary as may be fixed by the State Board of Health, not to exceed \$8,000. This officer is the head of a department or bureau, and therefore, not a subordinate employee.

Under Section 14, Chapter 122, Public Laws of 1925, the salary of the Director of the Department of Conservation and Development is to be fixed by the Governor, but not to exceed the salary paid to the State Geologist at the time of the enactment of said Chapter 122, Public Laws of 1925. (I am not advised what that salary was.)

By Section 1, Chapter 146, Public Laws of 1931, rewriting and amending C. S. 3846.f, the salary of the Chairman of the Highway Commission was fixed at \$7,500. This officer is the head of a commission and not a subordinate or employee. I find no statute permitting change in this salary other than as contained in Section 20 of the Appropriation Act with respect to the 10 per cent cut, and this salary is not subject to revision except as therein permitted.

By Section 5, Chapter 2, Public Laws of 1921, the State Highway Commission was authorized to fix the salary of the State Highway Engineer, with approval of the Governor. He is a subordinate and employee in the State Highway Commission. The power to fix his salary, as conferred by the Act referred to, is superseded by Chapter 277, Public Laws of 1931, and the Director of Personnel, therefore, has the right to fix his salary, with the approval of the Advisory Budget Commission.

DEPARTMENT OF LABOR; DIVISION OF STANDARDS AND INSPECTION—
CONTROL OF APPROPRIATION

9 February, 1932.

In compliance with request in your letter of January 14, I considered letter of Mr. E. F. Carter, Chief of Division of Standards and Inspection in the Department of Labor, other correspondence submitted therewith, and wrote you result of my investigation and the conclusions I had reached on January 15.

Other complaints in relation to the whole subject have come to your office from Mr. Carter, accompanied by copies of correspondence dealing with certain accounts apparently contracted by Mr. Carter for his Division.

It is quite apparent that Mr. Carter needs to conduct the Division of Standards and Inspection as a subordinate division in the Department of Labor and not as an independent organization of which he is the head. It appears that he assumes to make travel and purchase authorizations as the head of a department. Mr. Grist, as Commissioner of Labor, is executive and administrative head of the Department of Labor; Mr. Carter is Chief of the Division of Standards and Inspection. He is a subordinate in the Department of Labor. Mr. Grist is entirely right in his contention that the funds appropriated to the Division of Standards and Inspection in the Department of Labor are to be expended upon his authorization.

I find also that Mr. Grist is insisting that accounts for travel expense be itemized in the way that obtains in other Departments; that there should be no lump sum authorization for such travel expense. In insisting upon this, Mr. Grist is simply following the correct practice.

It seems that Mr. Grist held up authorization of salary vouchers for some days. I have told him that there was no authority for this, and that salary vouchers should be approved in accordance with the salary schedule as heretofore set up by the Salary and Wage Commission and as approved or modified by the Director of Personnel with the approval of the Advisory Budget Commission. All requests for authorization of expenditures other than salaries should be submitted in the proper way to Mr. Grist as head of the Department.

THE HARWOOD INVESTIGATION

11 February, 1932.

In accordance with your verbal request this afternoon, I submit the following additional and written report in the Harwood case:

Based upon an audit of the License Bureau of the Revenue Department made by Messrs. A. H. Howell and Carl K. Marler for the Auditor's Department, a civil action was brought June 5, 1931, in the name of the State, Hon. R. A. Doughton, former Commissioner of Revenue, and Hon. A. J. Maxwell, his successor, against Miss Lola G. Harwood, a former clerk in that Bureau, alleging that she had failed to account for the sum of \$4,903.00, proceeds of license taxes passing through her hands, and had converted the same to her own use. At the same time certain deposits of Miss Harwood in certain banks in the City of Raleigh, amounting in the aggregate to \$2,987.32, were attached.

On July 30, 1931, Judge Walter L. Small made an order in the cause directing that the plaintiffs supply the defendant with a copy of the audit involved and allow the defendant and her counsel opportunity to examine the books, records and papers in the office of the Commissioner of Revenue pertaining to the matters and things in controversy, and allowing defendant thirty days from August 10 in which to file answer. Answer was filed for the defendant through her attorneys, Messrs. Smith & Joyner, on September

ber 11, 1931, in which she denied the allegations of the complaint or any indebtedness to the State.

At the September Term, 1931, of Wake Superior Court a bill of indictment was returned by the grand jury charging Miss Harwood with embezzlement of the said sum of \$4,903.00. Hon. J. C. Little, Solicitor of the Seventh Judicial District, has, of course, been in charge of this criminal prosecution. We have frequently conferred with him about the case, and assured him that we would assist in it in any way desired by him.

The civil action was set for trial on October 28. Messrs. Smith & Joyner objected to trial at that time on the ground that they were not present when the case was so set for trial, and that it was not entitled to such early trial based upon its place on the civil issue docket.

At January Term, 1932, by consent the civil action was referred by Judge William A. Devin to Mr. J. M. Broughton, of the Raleigh Bar. Mr. Broughton gave notice that he would enter upon the hearing at a room in the Revenue Building on the morning of February 1, notice of which hearing was carried in the public press.

Commissioner Maxwell and I have constantly declined to consider any compromise of the case. At all times we have said to those representing Miss Harwood that the State would insist upon payment of the full amount found to be due, the audit, of course, being subject to any correction which might be made therein on the facts as they might be found.

Counsel for the defendant suggested a conference with representatives of the Revenue Department and this Department to be held on the morning of February 1, prior to the hearing before the Referee, with a view to going over the items in the audit as made. In that conference our Auditors reached the conclusion that we could not sustain two items in the audit, aggregating \$75.00. We thereupon informed counsel for the defendant that we would consent to elimination of these two items and settlement of the civil case on payment to the State of the sum of \$4,828.00.

At the conference on Monday morning, February 1, at the Revenue Building there were present Assistant Attorneys General A. A. F. Seawell and Walter D. Siler, representing the State, Mr. W. B. Jones and Mr. Willis Smith, representing the defendant, Mr. R. R. McLaughlin, License Tax Deputy in the Revenue Department, Messrs. A. H. Howell and Carl K. Marler, the Auditors who had made the audit, John K. Dorsett, an employee in the Department, and occasionally some other employees of the Revenue Department came to the room to give such information as they might, when desired.

Upon the order made by Judge Small on July 30, 1931, Judge John H. Harwood, father of the defendant, had had access to the books and records in the Revenue Department for the purpose of examining them. On some days he had been admitted to the building by the janitor for this purpose prior to the opening of the offices for work in the morning and some times would remain after the offices had been closed.

Since the making of the audit the correspondence relating to the various items that entered into it has been in the possession of Mr. Howell. The regular official records showing the issuance of licenses had remained in the Department.

At the conference on February 1, Messrs. Smith and Jones had with them notes or memoranda prepared by Judge Harwood as guide to them in their examination of the records material to the inquiry. When the regular official records of the office pertaining to the issuance of licenses were examined, certain erasures, substitutions and mutilations were found, which the Auditors stated were made after the audit. All of these tended to exculpate Miss Harwood.

The attorneys for the defendant called for certain copies of letters relating to particular items and which were supposed to explain the transactions in Miss Harwood's favor, their request for such copies of letters being based upon the notes or memoranda supplied them by Judge Harwood. No such copies of letters were found in the correspondence which had remained, as stated, in the hands of Mr. Howell. Search was made in other files in the Department, and finally several such copies of letters were found. These copies of letters as so found bore no relation to the files of cases in which they were so found. The appearance of these copies of letters, their contents in relation to the matters they were supposed to explain, and other indicia which they bore seem to exclude any possibility of their genuineness.

On the afternoon of Tuesday, February 2, Mr. Maxwell, Mr. Seawell and I went to your office and officially reported these matters to you, and it was agreed that the investigation should be completed and such action taken at the appropriate time as the facts found should justify.

We instructed Mr. Howell and Mr. McLaughlin to continue their search in the files of the Department so as to ascertain if there were copies of letters of a similar nature. They have done so and have reported to Mr. Maxwell and me that they have now found twenty-eight copies of such letters purporting to relate to items in the audit. These copies were found scattered at random in older files of the Department and without relation to whether they properly belonged to the particular file in which they appeared. The copies of letters so found, if genuine, would tend to exculpate Miss Harwood from the charge brought against her.

The case has been handled with celerity and dispatch, and brought to the point of a hearing quite earlier than is usual in cases of similar magnitude handled by this Department or generally in suits of such nature between private citizens. We have expected that judgment for, and payment of, the full sum due the State, \$4,828.00, would be consummated next week.

MEMBERS, STATE BOARD OF ELECTIONS; APPOINTMENT; TERMS OF OFFICE

9 March, 1932.

Referring to our conversation of this morning relating to appointment and terms of office of members of the State Board of Elections, I call your attention to Section 9, pamphlet copy of election law, C. S. 5921, which is as follows:

"There shall be a State Board of Elections, consisting of five electors, whose terms of office shall begin on the first day of June, one thousand nine hundred and five, and continue for two years and until their successors

are appointed and qualified. The Governor shall appoint the members of this board and not more than three of them shall be of the same political party. Their successors shall likewise be appointed by the Governor, and their term of office shall continue for two years and until their successors are elected and qualified."

It is evident that the statute contemplates appointment of members of this Board for terms to begin on the first day of June in the odd numbered years. However, you will observe that their terms continue "until their successors are appointed and qualified." Therefore, present members of the Board have remained in office and for the performance of their duties to the present time.

I suggest that your proper course would be to go ahead and make these appointments now. The terms of these appointees would, I think, end on the first day of June, 1933, or when their successors are appointed and qualified.

DIRECTOR OF PERSONNEL; STATE PRISON DEPARTMENT

21 March, 1932.

Some days ago authorities of the State Prison informed me that you wanted the opinion of this office as to whether the State Prison comes within the terms of Chapter 277, Public Laws of 1931, relating to duties and powers of the Director of Personnel.

The powers given by that Chapter to the Director of Personnel with respect to positions to be filled and salaries to be paid extend to "every department, bureau and/or commission of the State." By Chapter 163, Public Laws of 1925, the law with respect to the State Prison was rewritten.

C. S. 7698, as so rewritten, is as follows:

"The State's Prison shall be and continue a department of the State government and it shall be vested with all the property, real and personal, choses in action and other rights now owned, held or enjoyed by the former corporation known as the State Prison."

The official title of the state prison as continually referred to in that Chapter is "The State Prison Department." The act, then, as so written makes the State Prison a department of the State government. All State departments are included within the terms of Chapter 277, Public Laws of 1931.

It follows, then, that the Director of Personnel, subject to approval and review by the Advisory Budget Commission, has the same powers with respect to the State Prison Department as he does in relation to the other departments of the State government.

ELECTROCUTION—INSANE PERSON

7 August, 1931.

In answer to your letter of today, regarding the Governor's duty when a doubt exists as to the sanity of a person under sentence of electrocution, and referring, also, to the conversation had with regard to it:

When any doubt exists as to the sanity of a person under sentence of electrocution, I think that it is the duty of the Governor to respite the prisoner and have his mental condition investigated by competent experts. There is, of course, no law requiring him to proceed in any particular way to ascertain the facts and conditions which control him in the exercise of his constitutional power of pardon and commutation of sentence, but, inasmuch as the common law in force in the State does not recognize as lawful the execution of an insane person, I consider that it would be his duty in the exercise of the powers mentioned to have the facts ascertained.

I would therefore advise that a respite be given until such an investigation can be had.

DIRECTOR OF PERSONNEL—CUT IN SALARIES

17 June, 1931.

Your letter of June 11 received. Your inquiry is as to whether you have the right, pending survey of the needs of the various departments, to enforce an order directing a horizontal cut of 10 per cent in salaries of all employees not specifically exempted by the Appropriation Act or other ap-
posite statute.

So far as I am informed, the provisions of the statutes on the subject are the one to establish a Director of Personnel, and Section 20 of the Appropriation Act of 1931. That creating the position of Director of Personnel places the fixing of the salaries for each department in the head of that Department and the Director of Personnel, subject to approval by the Advisory Budget Commission. Section 20 of the Appropriation Act directs the cut of 10 per cent in expenditures for personal service in each department, beginning July 1. The only way in which your right to make the horizontal cut of 10 per cent could be affected is the provision referred to in the act creating the Director of Personnel.

As a practical matter, the cut of 10 per cent in the cost of personal service in each department must, of necessity, go into effect on July 1. For the time being, and while the survey of the departments is being made by you in conjunction with the various heads for the purpose of reaching definite conclusions, I am of opinion that you would have the right to apply the 10 per cent horizontal cut to all salaries not specifically excepted.

SALARY OF ADJUTANT GENERAL—APPROPRIATION ACT, 1931

31 August, 1931.

Your letter of August 28, with reference to above subject, received.

Section 20 of the Appropriation Act of 1931 provides for certain cuts in salaries. The salaries excepted from such cuts under the control of the Director of Personnel are those "paid to those officers whose election to office and compensation are subject to the provisions of the Constitution and/or statutes."

You will observe that the exception does not relate simply to those offices where the compensation is fixed by the Constitution or a statute, but also to the officers whose election to office is also fixed by the Constitution or a statute. Clearly, it would seem that "election" here relates to election by the people. It must be assumed that the General Assembly used that term in its usual and ordinary signification. If it had been intended to apply the exception to appointive officers, surely, the language used would have been broad enough to cover.

The Adjutant General is appointed by the Governor. It is my opinion, therefore, that he does not come within the exception in Section 20 of the Appropriation Act quoted above.

POWERS AND DUTIES OF DIVISIONS

18 June, 1931.

Today you submit to me certain inquiries which I endeavor to answer as follows:

1. Does the Division of Purchase and Contract have authority now, or at any time prior to July 1, to enter into general contracts covering the period beginning July 1, or thereafter?

A. Yes. It was intended that your Division should be set up so as, if possible, to begin its operation in time to call for bids and make contracts which would go into effect on July 1. As a consequence, you can proceed with your advertisement for bids and the making of contracts at the present time.

2. In entering into contracts at the present time in anticipation of needs after July 1, do the requirements as to ten days' advertising apply?

A. Yes. Always a practical interpretation must be given to administrative measures. There is no reason, however, founded in or growing out of that consideration, for doing otherwise than following the plain language of the statute, which does require, without exception, the advertisement for ten days for bids. Regardless of the fact that this may hamper the work of your Division somewhat, the language of the statute requiring ten days' advertising must be held to apply to all of such.

3. What is the status of contracts entered into prior to the passage of the law under authority in force at the time the contracts were made, and where such contracts are to run for a period beyond July 1?

A. Such contracts are in force and should be carried out. They were made in good faith, both by the State and the contractors, under authority which existed at the time of their inception. The act does not undertake to, and could not, properly or legally, authorize a violation of such contracts.

4. The Highway Commission, in anticipation of its needs in taking over county roads, has called for bids on one hundred and fifty $1\frac{1}{2}$ ton trucks, the said bids to be received on June 25. The purchases expected to be made on these bids are for immediate delivery and before July 1. Has the Commission the right to proceed with these bids and make purchases upon them when submitted, under the circumstances stated?

A. Yes. The bids call for necessary immediate purchases. They are in the regular course of the Commission's activities and in order to supply its normal requirements by purchases under contracts which will be executed before July 1. After you have, in accordance with the statute, established the sources of supply in the manner therein set out, purchases must be made through the Division of Purchase and Contract under its power and authority, and in accordance with requirements set up by it. Such sources of supply for these trucks needed for immediate use have not yet been established by you.

5. It may appear that certain agencies, the purchases for which are subject to the control of the Division of Purchase and Contract, have, since the passage of the act, attempted to make executory contracts for the purchase of supplies, such as coal, to be delivered next winter, or after July 1. Are these valid contracts, such as the ones described in question (3)?

A. The answer to this question is more difficult than any of the others, and the answer in each case may depend upon a different set of facts and circumstances. However, my opinion is that they are on a different footing from the type of contracts made and as described in question (3). Since the law in force at the time a contract is made is an integral part of the contract itself, the better view is that such attempted purchases were made without authority on the part of the officials attempting to make them.

6. It appears to be a physical impossibility for the Division of Purchase and Contract to make contract for all purchases within its control for all the various agencies and institutions of the State. These agencies and institutions have certain immediate needs which must be met. Would you have the right to authorize the officials of these institutions and agencies to meet their normal requirements for such necessary purchases after July 1 and pending your calling for bids and making contracts for such purchases under the provision of the act?

A. Yes. This may be done, pending the necessary time required for completing your organization and the details of calling for bids and making the purchases. The authorization to such institutions and agencies to make these small purchases for their normal requirements should be coupled with the notification that any agreement so authorized will be subject to cancellation by you at any time.

SIX CENT GASOLINE TAX; DELCO AND SIMILAR LIGHTING PLANTS; PUMPING STATIONS, ETC.; REFUND

3 August, 1931.

We understand from your letter that the question has been raised as to whether or not gasoline, consumed in the operation of Delco and other similar light plants, is subject to the 6 cent gasoline tax; also whether this tax applies to gasoline used in engines for pumping water and other similar purposes.

Chapter 145 Public Laws 1931 (Road Law), in subsection 5 (of Section 24) levies a tax of 6 cents per gallon "on all motor fuels sold, distributed, or used within this State."

This is especially comprehensive to include gasoline or motor fuels used for the purposes above mentioned. Section 15 of this Section of the Road Law provides for the refund or a rebate on account of motor fuels used for certain purposes, to wit:

1. Farm tractor used principally for agricultural purposes;
2. Motor boats used for fishing purposes; and/or
3. Manufacturing process in which such motor fuel is used as an ingredient, solvent or vehicle in the process.

The Section further provides the method by which the refund may be obtained.

At the same session of the Legislature (1931), Chapter 304 Public Laws of 1931 was enacted as an amendment to "House Bill 333" which is chapter 145, the Road Law. This amends Section 15 by providing refunds of tax on gasoline used for certain purposes as follows:

(1½) Tractor or stationary gasoline engine used only in the manufacture of lumber;

(2½) Mining machinery consisting principally of air compressors, hoist pumps and excavators used exclusively for mining purposes" and a further provision of this amending act reads:

"For such motor fuels as are to be used for mining purposes, the application should state the name, type, horsepower and serial number of the engine or engines so used and the purposes for which such engine or engines are to be used."

From this, it will be seen that the use of gasoline for the purposes above mentioned comes within the law imposing the tax, but does not come within the law authorizing a refund.

PRINTING APPLICATION CARDS MOTOR VEHICLE LICENSE

20 August, 1931.

Notwithstanding any manner in which the printing of the application cards for above purpose has heretofore been handled, and notwithstanding the fact that, as a matter of practice, the Highway Commission has heretofore been exempted from the operation of the general State printing contract, I think that Chapter 261, Public Laws 1931, creating your department gives you full power in the premises; and I refer you especially to paragraph (f), Section 1 of that Act, and, too, of Section 3.

You will find that there is an exception made in another part of the laws, with regard to printing, coming under the special supervision of the Supreme Court, such as printing the reports, etc. I understand that an agreement was made whereby the old State contract, expiring on June 30, 1931, "was renewed for a period of from sixty to ninety days," until a new contract could be entered into. I understand from this that the agreement was terminable at the option of that department, until a new contract could be entered into.

With this understanding, I am of opinion that you have the right to enter into an agreement with the present Board and have the printing done

at the State Prison. You understand, of course, that this opinion is given in view of the condition as to the existing contract, that it was extended for an indeterminate time and subject to your termination.

Of course, you would be bound by the old contract so long as it existed or, in the case of its extension for a definite period, until the expiration of that period.

OIL CONTRACTS; PUBLISHED SERVICE STATION PRICES; REDUCTION FOR CASH

25 May, 1932.

In your letter of May 23, you submit to us notice which was given to the oil companies when they were bidding upon the ten million gallons gasoline contract, offered by the State. The contract made with the successful bidders was upon the basis of this notice; that is, the price was fixed upon the published service station price in effect at time and point of delivery. You say that about thirty days ago, the oil companies, in a few places in the State, began offering 2 cents discount for cash; and you inquire whether or not such discount price should not be considered as a basis of the price to be charged the State, under the contract.

I am not aware how general the proposed discount for cash may be. I assume from your letter that it applies only to a few points in the State, but those points, or at least some of them, are points of delivery upon the State contract. It seems to me that if the oil companies had a published service station price fixed at the time, figured both for time and cash sales, the companies would have the right to make a difference, and offer and especially if the time sales formed any appreciable amount of the business a discount for cash sales, which would have the effect of instituting two published service station prices—one for time and one for cash. In that event, the State would only be entitled to the published service station price applicable to the character of the transaction, whether a credit or a cash transaction.

No particular attention was given such a possible distinction, when these contracts were let, or entered into, and I suggest that you consider whether or not the transactions between the oil companies and the State are considered to be upon a cash basis.

However, the above is written upon the assumption that the oil companies have exercised good faith in the matter, and that the price per gallon of the gasoline has not been advanced to the point indicated by the published service station price for the purpose of avoiding the effect of their contracts with the State, or have any other illegitimate purpose, which would have that effect.

In determining this, I think it would be fair to take into consideration the extent to which these prices are published from the proportion of cash transactions to credit transactions, and such factors as could be considered as legitimately raising the price of the gasoline to the published service station prices, upon which the discounts are made.

I think this element of uncertainty should be definitely removed from future contracts with the oil companies.

OPINIONS TO SECRETARY OF STATE

COOPERATIVE MARKETING ASSOCIATION

24 September, 1930.

A Coöperative Marketing Association, having the word "coöperative" in its charter, was incorporated in the State of Delaware. It has applied to you for domestication in North Carolina, under C. S. Section 1181.

As the law is now written, we think this cannot be done; that the applying corporation must organize under our laws before being permitted to do business in the State. The prohibition in Section 21, Chapter 87 of the Public Laws 1921 is so broad that we could not hold otherwise. That Section, so far as material, is as follows:

No person, firm, corporation, or association hereafter organized or doing business in this State, shall be entitled to use the word coöperative as part of its corporate or other business name or title, unless it has complied with the provisions of this act"—i. e., Chapter 87 Public Laws 1921.

We have examined the recent Coöperative Marketing Act, which became an Act of Congress June 15, 1929, and find nothing in it which will enable us to modify this opinion.

FOREIGN CORPORATION—DOMESTICATION

1 November, 1930.

You, in your letter of October 31, inquire whether or not a foreign corporation should domesticate in North Carolina, under the following circumstances:

A foreign corporation contracts with a North Carolina department store to manage and operate its shoe department. The foreign corporation has complete charge of the shoe department which from all appearances is just one of the departments of the local store. The name of the foreign corporation is not advertised nor is it known to the public. The shoes are bought or made by the foreign corporation.

We think this corporation is plainly doing business in North Carolina and should domesticate under C. S. Section 1181.

FOREIGN CORPORATION—DOING BUSINESS IN STATE

19 November, 1930.

A Massachusetts corporation has its principal office in Boston. Under its charter, it is authorized to do business of this kind:

It sends technical experts into North Carolina, who make surveys of cotton mills, with the idea of showing the mills how their production may be improved, and a report is rendered the mill.

This, of course, is rendering a service, but the corporation does not buy or sell any merchandise in North Carolina. Its technical experts go out from the main office in Boston to the various mills that it surveys in whatever part of the country, Canada or Europe, they may be.

Upon this, you inquire whether or not this corporation, doing business of this kind in North Carolina, should be required to domesticate, under C. S. Section 1181.

We think it quite clear that it should. In sending these employees into North Carolina, it sends them to perform for, and in its behalf, one of the corporate powers conferred upon it in its charter. This is a corporation doing business in North Carolina, though that business extends no further than surveys, as distinguished from dealing in goods.

FOREIGN CORPORATION—DOING BUSINESS IN STATE

28 November, 1930.

Mr. Alvin B. Hutzler, an attorney of Richmond, Virginia, in his letter of November 20 to your office, presents the following facts:

A Virginia corporation has recently bought at a sale, under a trust deed (presumably executed for its benefit), a tract of land located in North Carolina and expects to sell the same as soon as it can find a purchaser.

This, by itself, would not constitute doing business in the State of North Carolina. The facts, so stated, however, rather indicate that this corporation had been doing a loan business in the State of North Carolina. If this is true, that part of its business would ordinarily require this corporation to domesticate. However this is, of course, we are not informed. Cases which deal with the latter branch of the proposition are:

Adams vs. Colonial & U. S. Mortgage Co. 17 L. R. A. (N. S.) 138.

British American Mortgage Co. vs. Jones 76 S. C., 218.

British American Mortgage Co. vs. Jones 77 S. C., 443.

Chattanooga Nat. B. & L. Ass'n vs. Denson 189 U. S., 408.

CORPORATIONS—AMENDMENT OF CHARTER

10 June, 1931

On June 8, you referred to this office a letter of W. K. Boardman, Jr., relating to the proposed amendment of the Charter of the Myers Park Club, Incorporated of Charlotte, North Carolina. Mr. Boardman's complaint seems to refer only to the internal management of the corporation itself, he being a minority stockholder.

The authority to amend charters of corporations is very broad, as contained in Section 1131. Your functions, as Secretary of State, do not ex-

tend so far as to enable you to hold up a proposed amendment to a charter because it may be that in that amendment some wrong is inflicted upon a minority stockholder. You have authority only to see that the papers presented to you in conformity to the law regulating such papers.

It is, therefore, plain that Mr. Boardman should resort to the courts, if upon consultation with private counsel he thinks any wrong has been inflicted upon him.

TRADEMARK—REGISTRATION

1 July, 1931.

Your question to Mr. Nash, regarding the application of Charles P. Gerrish for registration of trade-mark has been referred to me.

An examination of the application, particularly paragraph 4, indicates that the intended trade-mark really is not expected to apply to the class of goods sold, but to indicate a business or trade and the words used seem to indicate the same thing. I do not think that the trade-mark, if registered, would protect the applicant and, therefore, I do not think that this registration is authorized under Chapter 77 of the Consolidated Statutes.

FOREIGN CORPORATION HOLDING TITLE

3 November, 1931.

You refer to this department a letter from Delaware Registration Trust Company, containing an inquiry as to whether or not a foreign corporation holding land in this State is construed to be transacting business by virtue of such holding.

No. The taking of title to land is not considered doing business here, and to hold the land it is not necessary for a corporation to domesticate.

BLANK CERTIFICATE, AS TO LEGALITY; SALE; SPECIALTIES

3 November, 1931.

Answering your inquiry based upon the letter of the Proprietary Association of Washington, D. C., requesting that you issue certificates as to the legality of the sale in this State of pharmaceutical merchandise, I will say that I do not think it is competent for you to issue such a certificate. There is no law authorizing or permitting you to issue certificates in such a matter, that I know of, and certainly it would be improper to issue a certificate under which articles might be sold contrary to law.

NEW RELIGIOUS SOCIETY; CONFERRING RIGHTS UPON MINISTER

30 November, 1931.

In reference to inquiry submitted to this office from Reverend A. J. Butler, of Dunn, N. C., Chapter 69 Consolidated Statutes of North Carolina, is the

only general law that I know bearing upon the general question of organization of religious societies in this State. It is intended to fix the legal status of such societies and the manner in which they may hold and dispose of property, but does not, of course, go into the question of how they may ordain or commission a minister, or what rights they may give one.

I can think of only one subject of importance in connection with the ordaining of ministers, and that is with regard to the right of such minister to officiate in the marriage ceremony. That is covered by C. S. 2493, and in that event, the marriage must be by "an ordained minister of any religious denomination, minister authorized by his church."

NEW CORPORATION—SIMILAR NAME

3 February, 1932.

Replying to yours of January 26, will say that I do not think that a new corporation may be formed with exactly the same name as one whose charter has been cancelled under Section 451, Chapter 427, Public Laws 1931, during the ten years in which the latter corporation has to restore its corporate rights. There would be evident conflict in case the corporation whose charter is cancelled desired to reinstate itself, under Section 453, and I consider that Section 453 is mandatory as to the restoration of the rights of a corporation which has complied with the terms of the statute.

OPINIONS TO STATE AUDITOR

STATE AUDITOR—POWERS

24 January, 1931.

Your letter of January 5 requires us to discuss the duties of the State Auditor, imposed upon him by the Constitution and the statutes of the State, somewhat fully.

The Auditor is made, by Section 1 of Article 3 of the Constitution, a constitutional officer. Section 13 of that instrument declares (among other things), that the duties of the auditor shall be prescribed by law. This authority in the Legislature appears to have no limit, unless some limit may be discovered in the designation of this particular officer as auditor. That this particular limitation should exist, it must be shown that an auditor had imposed upon him, as such, certain specific duties and powers at common law.

At the time the Constitution of 1868 was adopted, an auditor was understood to be "an officer or person whose business it is to examine and verify the accounts of persons entrusted with money." Another definition is that he is an "officer of government whose function it is to examine, verify and approve or report accounts of persons who have had the disbursement of government money, or who have furnished supplies for government use."

In North Carolina, in pursuance of authority found in the Constitution, the General Assembly, in C. S. Section 7675, specifically defines the duties of the auditor. These duties, thus defined, go very much beyond the above quoted descriptions of the functions of that office. Notwithstanding this fact, there can be no doubt that the designation of these duties, in Section 7675, was clearly within the constitutional competency of the General Assembly. If, therefore, there has been any restriction of the auditor's authority, as contained in said Section, we must examine the statutes enacted since, to determine what those restrictions are, for it is equally clear that the Legislature would have constitutional authority to decrease the duties of the auditor as well as to increase them.

Subsection 9 of Section 7675 gives the Auditor exclusive power and authority to issue all warrants for the payment of money upon the State Treasurer. An examination of the statutes since results in our not finding any modification of this mandatory provision, unless it should be contained in Section 4 of Chapter 337, Public Laws 1929. This comes immediately after Section 3, which abolished the office of treasurer of the various institutions described in C. S. 7689. If those institutions had no treasurer at the time, of course the abolition was futile. Regardless, however, of whether there was or was not such treasurer, the State Treasurer remains treasurer ex officio of those institutions.

Section 4 is in the following words:

The Director of the Budget under the provisions of the Executive Budget Act shall prescribe the manner in which disbursements of the several institutions and departments shall be made and may require that all warrants, vouchers or checks, except those drawn

by the State Auditor and the State Treasurer, shall bear two signatures and of such officers as will be designated by the Director of the Budget.

This only inferentially seems to intimate that there may be warrants drawn by some other authority upon the State Treasurer than that of the Auditor. It does not directly deal with the subject. It does not directly give the Director of the Budget authority to authorize such warrants to be drawn by any other person. The Director of the Budget then, might very well require the signature of two officers designated by him to all vouchers and checks, without at all interfering with the authority of the auditor, under subsection 9 of Section 7675.

We have heretofore dealt with this statute, in determining the effect of the same upon the office of the Treasurer. You will find the opinion in the Biennial Report 1928-30, at page 112. We do not interpret the Act as it is worded as it will interfere with the treasurer of the University of North Carolina. If, therefore, so far as this Act is concerned, money is in the State Treasury for that institution, the usual course would be pursued and the State Treasurer's bond would protect that money, just as it protects all other money in his hands.

We trust this answers your question.

DIRECTOR OF PERSONNEL; AUTHORITY OVER EMPLOYMENT IN
AUDITOR'S OFFICE

30 March, 1932.

In your letter of March 24 you ask: "Please let me know what authority the Director of Personnel has over the employment or promotion of people in my organization?"

This subject has been heretofore covered in letter of this office of March 22 to Hon. E. B. Jeffress, Chairman, State Highway Commission, copy of which is enclosed. It was also, in principle, answered in letter of February 18, 1925, found on page 311 of the Biennial Report of this Department for 1924-26, since the powers of the Director of Personnel are similar to those of the Salary and Wage Commission under the Act of 1925.

By Chapter 277, Public Laws of 1931, the Director of Personnel, subject to approval by the Advisory Budget Commission, is authorized to fix and determine the necessary number of subordinate positions to be filled, and the salaries and wages of such positions, in all State departments, bureaus and commissions.

The Director of Personnel may also, upon request from the head of a department, bureau or commission, examine applicants for positions in such department, bureau or commission, and may keep a list of persons deemed by him to be qualified for such positions. The head of the department, bureau or commission may, if he wishes, appoint employees from the list so kept by the Director of Personnel, but is not required to do so. The head of each department, bureau and commission has the right to select employees within his organization without control by the Director of Personnel.

OPINIONS TO STATE TREASURER

STATE BOND—PAYABLE TO BEARER

10 October, 1930.

You inquire how a State bond, registered as to principal only, shall be made payable to bearer.

Under Section 7405 of the 3d volume of the Consolidated Statutes, when such bond is presented to you with proper transfer by the person in whose name the principal is now registered, you make it payable to bearer at the request of the transferee by writing, at the proper place on the back of the bonds, the word "bearer" and sign your name with the proper date.

DEPOSITS—SECURITY FOR

20 December, 1930.

You request this office to furnish you an opinion defining the extent of your discretion, if any, in dealing with security demanded by you from banks in which State funds are deposited.

The original Section, regulating the deposit of such funds in banks, is C. S. 7684. That Section requires every official exercising control over banks and so having special information as to their solvency, to keep the State Treasurer fully informed at all times as to the condition of all such depository banks. It then continues:

The State Treasurer shall before making deposits in any bank, require ample security from the bank for such deposit.

This enables the State Treasurer to deal specifically with particular banks if for any reason he should think the security tendered is insufficient or if the security already accepted had deteriorated in value to any extent. In other words, the Treasurer determines whether he has ample security or not, in particular cases and can require the security to be strengthened, if, in his opinion, it is not ample.

Such was the condition of the law, when the Daily Deposit Act of 1925, Chapter 128 of the Public Laws, was enacted. That, in practical effect, required all State Departments, and Institutions collecting money belonging to the State, to deposit the same daily in some bank selected and designated by the Treasurer. Section 2 of the Act required the Treasurer to exact from the particular depository bank a bond, or, in lieu thereof, collateral security for such deposit, consisting of such bonds as are approved for investment for the State Sinking Fund, as described in Section 5 of Chapter 62 of the Public Laws 1925.

Upon this, you inquire whether or not the Act of 1925 in any way impairs your duty to see that the funds of the State are amply secured, even though a depository security bond should be tendered you. In other words, does the fact that the particular Surety Company has been authorized by the

Insurance Commissioner to do business in the State of North Carolina, prevent you from refusing to accept the bond of that company, on the ground that the company itself is so financially weak as not to constitute that bond ample security?

We think not. The general purpose and intent of both acts is to secure the State deposits in such way that there can be no doubt that the security is ample. The duty of determining whether that security is ample is placed upon you. Therefore, if you have evidence that the particular Bonding Company is not so financially strong as to make the State security ample, you can refuse to accept the bond executed by that company.

STATE OF NORTH CAROLINA SERIAL 4 PER CENT BOND No. B88348; PAYMENT BY
STATE OF LOST OR DESTROYED BOND; INDEMNITY THEREFOR

8 August, 1931.

You have submitted to this department the letter of Messrs. Fordyce, Holliday and White of St. Louis, Missouri, in further correspondence concerning certain stolen bonds supposed to be the property of Mr. Cox.

It is suggested that the above described bond is past due and has been destroyed, and it is desired that payment of the same may be had upon furnishing to the State a special bond of indemnity covering the matter of loss to the State, if the bond should be presented subsequently for payment. The law of this State recognizes such procedure in the matter of such destroyed bonds or notes between individuals, but I can find nothing in the statute providing for such procedure on the part of the State.

Recognizing the justice of the claim of Mr. Cox and the reasonableness of the request and the suggested procedure, I still think that you, as State Treasurer, have no authority in law to accept the bond of indemnity and pay the State bond. It seems to me that it is a subject for legislative action by special law, which will cover this particular situation, or a general law providing against all such occurrences, but I think at present it is beyond your authority.

CUSTODY OF PROCEEDS COUNTY NOTES; LOCAL GOVERNMENT COMMISSION; STATE
TREASURER AS TREASURER OF COMMISSION; TREASURER'S BOND AND
DEPOSITORY BOND

10 September, 1931.

Chapter 60, Public Laws 1931, creating the Local Government Commission and giving it certain powers with regard to the sale of county notes and the custody and handling of the proceeds of such sale, makes you, as State Treasurer, the treasurer of that Commission.

Section 7 contains that provision and Section 25 makes the provision as to the custody of the funds, particularly, it provides that the treasurer may remit the proceeds to the lawful custodian of funds of the unit, or, in his discretion, to the properly designated depository or depositories of the unit, after assurance that the safeguarding of such proceeds has been provided as required by law, etc.

In my opinion, the proceeds of the sale of the notes or bonds of the counties, while in your hands or while in depositories designated by you, are not protected by the depository bonds or deposit of securities put up by such depository bank to protect State funds, nor do I think that your bond, as State Treasurer, would be liable for such county money. The funds are, in no sense, the funds of the State, nor does the fact that you are State Treasurer and that they are in your custody give the funds that character. The office of State Treasurer and the office of treasurer of the Local Government Commission, although in the same person, are, in my opinion, different offices.

I can very readily see how such funds might accumulate in your hands to a very large extent and might become a subject of embarrassment. I, therefore, recommend that you require the depository bond or a deposit of securities to protect these funds as a matter separate and apart from the protection of State funds.

I have looked over the form of bond and receipt which you have sent to us for inspection and make a slight pencil alteration in the form of the bond, which I think will meet the situation.

DELINQUENT TAXES—DUTY OF STATE TREASURER

9 May, 1932.

In your letters of May 3 and May 5, and also in conversation between us, you have inquired as to what your duty may be with respect to failure of boards of county commissioners to order the sale of land for delinquent taxes, under Chapter 213, Public Laws 1927. Specifically you have inquired as to whether a court would, upon suit brought by you, issue a mandamus to compel a board of county commissioners to order such sale of land for delinquent taxes.

I am of opinion that a court would not, in a suit brought by you, issue a mandamus compelling a board of county commissioners to order a sale of land for delinquent taxes.

GENERAL FUND NOTES OF STATE; EXEMPT FROM STATE, COUNTY AND MUNICIPAL TAXATION; INTEREST; INVESTMENT BY FIDUCIARIES; BY CERTAIN UNITS OF GOVERNMENT; IN LIEU OF SURETY BONDS TO SECURE FUNDS OF UNIT.

14 May, 1932.

In response to your inquiry of this morning, I am of opinion as follows with respect to notes issued under authority of Chapter 371, Public Laws of 1931:

- (a) That such notes are general obligations of the State of North Carolina;
- (b) That they are exempt from all State, county and municipal taxation;
- (c) That interest on said notes is not subject to taxation as for income;
- (d) That it is lawful for fiduciaries to invest moneys in their hands in said notes;

(e) That under the Local Government Act, the sinking funds of units therein described may be invested in said notes;

(f) And that under said Local Government Act, said notes may be used in lieu of a surety bond for the purpose of securing the deposit of both sinking funds and current funds of a unit in a depository bank.

SALE OF LAND FOR DELINQUENT TAXES; MANDAMUS; DUTY OF STATE TREASURER

14 May, 1932.

Your letter of May 11 received. In my letter of May 9 I stated that it was my opinion that a court would not, in a suit brought by you, issue a mandamus to compel a board of county commissioners to order a sale of land for delinquent taxes. It follows that upon that opinion, no responsibility or duty rests upon you to bring any action or otherwise seek to exercise any legal compulsion upon a board of county commissioners to require such board to order a sale of land for delinquent taxes.

FACSIMILE SIGNATURES, CHECK SIGNERS; AUTHORITY TO ACCEPT SIGNATURE

23 May, 1932.

In yours of May 19, you inquire whether or not you may accept and honor signatures made by a device known as "New Todd Blue Streak Check Signer." This machine is intended to facilitate the signing of checks and saving time and arduous effort spent therein. It uses a facsimile signature, which is stamped upon the checks at the appropriate place for signature, as they are rapidly run through the machine.

The genuineness and validity of private signatures has come under question in a great many ways in the courts. Concerning these private signatures, a very liberal construction has been given, and it has been generally held that where a signature has been authorized, its particular form or the particular circumstances under which it has been made are not material. Such a signature may be a facsimile, or a mark, or may be affixed to the instrument in the presence of the person whose signature is required, or, in many cases, by an agent, and all will be binding.

However, when we come to official signatures, there are not so many decided cases, and the law seems to be somewhat stricter. In most cases, the validity of the signature is made to depend upon the circumstances under which it is attached. In my judgment, the authorization which might be given by an official to another person to sign the name of the official, or to use a device, either a rubber stamp or a more elaborate machine, in affixing this signature, is of doubtful validity. I feel sure that it might, in some cases, lead to complicated problems. While the use of such a device in private matters might make the person whose signature is signed liable, although it was plainly misused, if the party had trusted the user of the device with the authority to sign his name, when you consider the matter as between officials, it is doubtful whether such a principle would obtain.

This leads me to the conclusion that you would not be always safe in accepting and honoring such a signature, in the event that the authority to use it was abused, either through mistake or intention. I do not consider the use of the device, in official matters, safe, in the absence of a statute authorizing such a signature, and I do not think that an official whose signature is desired can delegate the authority, generally, to another to sign.

OPINIONS TO SUPERINTENDENT OF PUBLIC INSTRUCTION AND OTHER SCHOOL OFFICIALS

SCHOOL BUSES—LEASING

8 July, 1930.

You submit to me letter of June 27 from J. R. Brown, Superintendent of Schools of Hertford County. He inquires whether school busses may be rented out on per capita charge to people who wish to use the same for transportation to a beach picnic, the proceeds to be credited to the county school fund.

I am of opinion that school authorities have no right to use the school busses in such way.

SCHOOL BUILDINGS—USE IN ELECTIONS

24 Sept., 1930.

I am in receipt of your letter of September 23, with enclosures from Mr. K. R. Curtis, Superintendent of Schools of Wilson County.

The concluding sentence of Section 17, Chapter 164, Public Laws of 1929—the Australian Ballot Law—is as follows:

The county board of elections shall also be entitled to demand and use any school or other public building for the purpose of holding any election and require that such building be vacated for such purpose.

You will thus see that this is more definite and conclusive on the subject than Section 71 of the school code. Undoubtedly, the board of elections has the right to use the school building as set out in the statute.

HIGH SCHOOL—ATTENDING AFTER GRADUATION

24 Sept., 1930.

Your letter of September 23, with enclosures from Mr. R. M. Gray, Superintendent of Statesville public schools, received. I see nothing in the law to prevent a person under twenty-one years of age from attending high school although he may have theretofore graduated from high school.

I will be very glad to have your or Mr. Gray's views in opposition, if you differ, for purposes of reconsideration, but this is the conclusion I now reach.

SCHOOL PROPERTY—LIABILITY FOR ASSESSMENT

19 November, 1930.

I have received your letter of November 18, enclosing letter from Superintendent Frank M. Martin, of Durham City Schools. I answer the question submitted as follows:

1. Can the City Council, or governing body of a city, require the School Board of a special charter district to pay assessments for street improvements made by the city adjacent to school lands, title to which is vested in the School Board?

I think so, assuming that necessary requirements of the statute have been complied with. I reach this conclusion upon the discussion contained in *Tarboro v. Forbes*, 185 N. C., 59. The property of the graded schools should be counted along with that of the other owners in the district with respect to lineal feet and number of owners. When this is done and the procedure for establishing the district properly had, I think that the school board is liable for its share of the street improvements.

It apparently becomes unnecessary to restate or answer the second question in Mr. Martin's letter.

ELECTIONS TO VOTE OFF SPECIAL TAX

23 June, 1931.

The General Assembly of 1931 passed Chapter 372, which has the effect of amending Section 227 of the School Code, C. S. 5531 (now III C. S. 5647). This Act applies to a number of counties set out therein, and with respect to such counties, Section 227 of the School Code (or III C. S. 5647) will now read as follows:

Upon petition of twenty-five per cent (25%) of the number of registered voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, the same shall be endorsed and approved by the county board of education, and the board of county commissioners shall order another election in the district for submitting the question of revoking the tax and abolishing the district, to be held under the provisions prescribed in this act for holding other elections. It shall be the duty of the board of education to endorse the petition when presented, containing the proper number of names of qualified voters, and this provision is made mandatory, and the board is allowed no discretion to refuse to endorse the same when so presented. If at the election a majority of the qualified voters in the district shall vote 'Against Local Tax,' the tax shall be deemed revoked and shall not be levied, and the district shall be discontinued: *Provided*, this act shall not apply to that part of such tax, if any, in said district as may be necessary to pay the interest on or amortization of any bonded or other indebtedness, incurred in consequence of the voting of said special tax district but to that extent, and to that extent only, shall said special tax district be maintained.

Certain inquiries have reached you and been submitted to me, which I undertake to answer as follows:

(1) Is the County Board of Education required to approve the petition for an election for the repeal of the special tax when presented with the requisite number of signatures as required by the Section so amended?

Ans. Yes.

(2) If the petition is approved by the Board of Education, is it mandatory that the County Board of Commissioners call the election?

Ans. Yes.

(3) In order for the tax to be voted off, is it necessary that a majority of the qualified or registered voters cast ballots against the local tax?

Ans. Yes. The same language is used here—that is, “If at the election a majority of the qualified voters,”—as is used in Section 222 with respect to voting the tax on. In order that the tax may be voted on under Section 222 of the School Code, a majority of the qualified voters must vote for it,—that is, it must be carried against the registration; in order that the tax may be voted off under Section 227 of the school code, a majority of the qualified voters must vote against the tax—that is, the vote in both cases is against the registration.

(4) Can absentee ballots be used in this election?

Ans. No.

(5) If the election should carry to vote off the tax, would the district be abolished?

Ans. It would, in the language of the statute quoted above, be maintained only for the purpose of levying and collecting the necessary taxes to meet the indebtedness against it, principal and interest. The district would not, therefore, be abolished, but no special tax for maintenance of the school could be levied therein.

(6) If the election is carried in a particular district, should the Board of Education submit to the Board of County Commissioners a budget including request for a tax levy in the district to care for principal and interest of the district's indebtedness?

The answer to this question is complicated by considerations as to whether or not the county has heretofore assumed the bonded indebtedness of such district as permitted by Sections 179 and 238 of the School Code. The facts with respect to whether the county has assumed such indebtedness in the particular cases presented to me are difficult of analysis for the purpose of definite answer. The best advice that can be given now is that where a county board of education takes the position that the county has not assumed such indebtedness, its proper course would be, of course, to include request for levy in such district for the required debt service in the budget which it submits to the County Commissioners. It will then be for the County Commissioners to determine what course to pursue in the matter. In advance of request for opinion from a board of county commissioners in a particular case, it would be impossible for this office to reach a conclusion as to what would be the proper course for such Board of County Commissioners to follow.

(7) What effect would the carrying of an election to vote off such tax have upon the county-wide plan of organization?

Ans. In advance of the submission of particular facts which might justify a different conclusion, I am of opinion that voting off such tax would have no effect on the county-wide plan of organization, but that for the purpose of the six months school term the district would remain as theretofore organized.

ELECTION—SPECIAL CHARTER DISTRICT

13 July, 1931.

You submit to me letter of July 7 from Mr. E. E. Sams, Superintendent of Schools of Lenoir County. It appears that petition has been filed with the County Board of Education of Lenoir County, asking that an election be called to vote off taxes for an extended term in the Kinston Graded School District. My opinion is requested as to whether this petition should be passed on by the County Board of Education or referred to the Board of Trustees of the Kinston City Schools.

I suggest that you send Mr. Sams copy of my letter of June 23 to you, which relates generally to the problem. That letter contains copy of Section 227 of the School Code, now III C. S. 5647 as amended and rewritten by Chapter 372, Public Laws of 1931, relating to certain counties, of which Lenoir is one.

This inquiry relates to a special charter district. That Section 227 of the School Code, as rewritten and amended by Chapter 372, Public Laws of 1931, with respect to Lenoir County applies to an election to vote off such special taxes in the Kinston special charter district. Therefore, I think that the answers I have made to the questions as contained in my letter of June 23 are applicable to this situation.

I am of opinion that the petition should be submitted to the County Board of Education, and if found to contain the requisite number of signatures, such board is required to approve the petition, and it then becomes mandatory on the Board of County Commissioners to call the election. This is the construction which in my opinion the Supreme Court would place upon the statute as rewritten and as applicable to Lenoir County.

It might not be amiss for me to say that, out of an abundance of precaution, it might be well to present the petition to the trustees of the Kinston Graded School District for their endorsement also. However, I do not regard this as necessary.

SPECIAL TAXES—HOW APPROVED

16 July, 1931.

You submit to me letter of July 9 from Mr. E. M. Rollins, Superintendent of Schools of Vance County. He asks certain questions relating to Chapter 91, Private Laws of 1901, establishing Henderson Graded Schools.

In reply to his first inquiry, I have to say that under Section 4 of that Act, the word "shall" would require the Board of Commissioners of Vance County to levy a special tax to raise such sums of money as the trustees might deem necessary to support and maintain the graded schools within a limitation of 20 cents as therein set out. Section 7 of the Act clothed the Board of Trustees with power to employ and fix the compensation of officers and teachers, which would, of course, give them authority to supplement salaries of superintendents and teachers.

The powers conferred upon the Board of Trustees, however, are limited by subsequent legislation, particularly the new school law, Chapter 430, Public Laws of 1931. In my opinion, the powers of all subordinate school

and county officials are limited by that Act in the way set out in your circular letter of July 7 to county and city superintendents. That letter correctly summarizes the law with respect to necessity of approval of the budget by various boards as therein set out.

In my opinion, all of these school budgets are now subject to review and approval by the State Board of Equalization. The budget for the extended term in the Henderson Graded Schools is subject to review and approval by the Board of County Commissioners and the State Board of Equalization.

COMMISSIONERS AND MEMBERS OF BOARDS DEALING WITH THEIR OWN BOARDS

4 September, 1931.

With reference to the letter of Mr. T. Wingate Andrews, Superintendent of Public Schools of High Point, N. C., and the inquiry contained therein, the facts stated by Mr. Andrews are as follows:

The Cecil's Drug and Stationery Store, Inc., of High Point, has submitted a bid on lockers for the new junior high school. Mr. A. Coke Cecil, a member of the School Board, is a stockholder in this concern and probably manager. The question is, whether or not the Board can legally purchase lockers from this concern, in case other considerations suggest that this is the proper course.

The answer is—No. Section 4390 Consolidated Statutes, provides as follows: "If any member of any Board of Directors, Board of Managers, Board of Trustees of any of the educational, charitable, eleemosynary or penal institutions of the State, or any member of any board of education, or any county or district superintendent or examiner of teachers, or any trustee of any school or other institution supported in whole or in part from any of the public funds of the State * * * shall have any pecuniary interest, either directly or indirectly, proximately or remotely in supplying any goods, wares or merchandise of any nature or kind whatsoever for any said institution or schools," he shall be guilty of a misdemeanor and fined not less than fifty dollars nor more than five hundred dollars and be imprisoned, in the discretion of the court.

There is still another law upon this subject, but this is sufficient to cover the inquiry. The law preventing commissioners and members of boards from trading with the commission or board is one of the oldest laws of which I have any knowledge and there have been frequent prosecutions thereunder.

FINES, FORFEITURES, DOG TAXES; APPLICATION; OBJECTS OF EXPENDITURE; TRANSFERRING FUNDS

18 September, 1931.

I do not understand the authority which is given in Section 18 of the School Machinery Law, to transfer funds within the limits of the State budget, to authorize the Board of Equalization to make any such disposition of the fines, forfeitures, penalties and dog taxes, unless, and until the objects of

expenditure designated as (1) maintenance of the plant, and (2) fixed charges, have been supplied in so far as may be from those funds.

Answering your questions, then:

1. Did the General Assembly appropriate these special funds and limit their use to the objects of maintenance of plant and fixed charges?

Yes. To the extent they are needed for such purposes.

2. Would the county commissioners have authority to transfer and utilize these funds in Budget No. 2 to supplement objects or items of expenditure under Section 15?

No, unless there might be a clear surplus.

3. In case the city's part of these funds is paid over in a lump sum, would the city be required to use them for maintenance of the plant and fixed charges?

Yes.

PENALTIES—NON-PAYMENT OF TAXES; GO TO FUND FOR WHICH COLLECTED

23 September, 1931.

I am in receipt of your letter of September 22, enclosing letter from Mr. K. R. Curtis, Superintendent of Schools of Wilson County and City Schools.

This department has consistently expressed the view that the penalties imposed for non-payment of taxes go to the fund with relation to which they are collected. Each fund would get the benefit of these penalties and suffer the loss of the discounts.

COUNTY BOARD OF EDUCATION NOT LIABLE IN DAMAGES FOR NEGLIGENCE OF EMPLOYEES; LIABILITY INSURANCE

23 September, 1931.

I am in receipt of your letter of September 22, enclosing letter of September 8 from Mr. John M. Cheek, Superintendent of Schools of Alleghany County.

As a corporate body dealing with public school funds, the County Board of Education is exercising governmental functions, and as such—certainly, without a special statute to the contrary—is not liable for damages occasioned by the default or negligence of one of its employees. This is the universal rule applicable to all governmental agencies while engaged in the performance of public duties imposed upon them by their official position.

It follows, then, that a County Board of Education in its corporate capacity is not liable in damages for injuries occasioned by negligence of the operator of a bus transporting school children, whether the same be done under direct control of the board or under contract with some individual. For that reason, we have consistently advised that such boards gain nothing by taking out liability insurance. This insurance could only be

effective because of the liability of the County Board of Education in its corporate capacity. As it is not so liable, such insurance should not be taken out to protect it against such liability for negligence of its employees.

The board, of course, should be careful in the selection of the drivers. If they selected a driver known to be negligent, some question might arise as to their individual, personal liability, though I consider such contingency remote. *Benton v. Board*, 201 N. C., 653.

PENDER COUNTY SCHOOL TAX LEVY 16 CENTS; A. C. L. RAILROAD

30 December, 1931.

Acting under Section 492 of the Revenue Act of 1931 (Chapter 427), the Board of Commissioners of Pender County made the school tax levy of 16 cents on the \$100 of assessed value of property in that county as being the equivalent of 15 cents on the assessed values for the year 1930. Complaint is made by the officials of the Atlantic Coast Line Railroad that this 16 cent levy is slightly excessive, and as a consequence, on that basis that railroad will be required to pay slightly more than an amount exactly equivalent to the 15 cents on the 1930 valuations. Inquiry is made as to whether the commissioners can relieve the railroad of the small amount of taxes represented by this slightly excessive rate, and not relieve other taxpayers in the same proportion.

Assuming that the 16 cent rate as levied is slightly in excess of the exact equivalent of the 15 cent rate on the 1930 valuations, I am of opinion that this cannot be done. It is stated that the railroad's contention is that it will pay \$141 in taxes in excess of the exact amount which would be equivalent to 15 cent rate on its 1930 valuations. Here the maxim, "*De minimis non curat lex*" ("*The law cares not for small things*") will apply. In the practical application of this Act it would be difficult to make the rate the exact equivalent of the 15 cents on the 1930 valuations. The action of the commissioners in fixing the rate and making the levy cannot be held to be illegal because of some slight variation, such as that pointed out here.

EXTENDED TERM; AUTHORITY TO OMIT; LEVY OF TAX

23 July, 1932.

I undertake herein to answer certain inquiries coming through your office, and direct to me, from a number of local officials.

By Section 219, School Code, now III C. S. 5639, the local school tax thereunder voted is expressed to be "to supplement the funds of the six months public school term for that district." By Section 222, School Code now III C. S. 5642, upon the carrying of such local school tax election, "the maximum rate so voted shall be levied, unless the County Board of Education or Board of Trustees shall request a levy at a lower rate, in which event the rate requested shall be levied and collected."

These local school taxes are adopted by "a vote of a majority of the qualified voters" of the district, as permitted by Constitution, Article VII,

Section 7. The district may be abolished and/or the taxes revoked, in a special election called for that purpose, upon the vote of "a majority of the qualified voters in the district," Section 227, School Code, now III C. S. 5647, as amended with respect to certain counties by Chapter 372 of the Public Laws of 1931. And the General Assembly may, by its own act, abolish such districts and remove and revoke such local taxes so voted for maintenance purposes. The General Assembly may also circumscribe and limit the extent to which such taxes so voted may be levied.

Until the people of the district or the General Assembly Act in abolishing such districts, revoking and/or voting off such taxes, or limiting and circumscribing the extent to which they may be levied, the action of the people in authorizing the levy of such local taxes is protected by certain constitutional principles.

Constitution, Article I (the Bill of Rights), Section 27 says: "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."

And again, Constitution, Article IX, Section 1: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

The General Assembly has set up the exclusive method by which these districts may be abolished and/or these local taxes voted off or revoked. It has not abolished the districts by its own act. It has not undertaken to premit the levy of the whole of such local taxes so voted for this or any other particular year. Nor has it conferred such power upon local committees or boards of trustees, upon County Boards of Education, or upon tax levying authorities or the State Board of Equalization. It may be assumed that if it had the purpose to exercise or confer such power, it would have done so directly and in language sufficiently explicit to remove any doubt as to its intent. I find no statute which, by implication or total repugnance to previous enactments, can be construed as an exercise or grant of such power.

In these local school tax elections the people do not specifically vote for an extended school term of any particular length. Such taxes are voted "to supplement the funds for the six months public school term," and not simply to supplement or extend the school term. Primarily, the object has been an extension of the school term, but the statute permits, and the practice has been, to use a portion of the special taxes so voted both for the purpose of providing a longer school term and of conducting the schools at a higher standard.

Certainly, since 1919, none of these local taxes have been voted for the explicitly expressed purpose of establishing or maintaining a particular high school. But the statutes do set up what is a standard high school. Section 8 of the School Code, now III C. S. 5392, defines a standard high school as being one with "a school term of not less than one hundred sixty days." Under the law, then, both in practice and in voting local taxes since 1919, the standard high school has been accepted as consisting of a term of not less than eight months. The practice is a fact of common knowledge of which the courts would take judicial notice.

It follows, then, that the special school taxes so voted and now in force are to be levied subject to such limitations as have been imposed by the General Assembly. It remains to ascertain to what extent the General Assembly has circumscribed and limited the levy of such taxes.

The local committee or Board of Trustees and the County Board of Education submit a budget for the extended term to the tax levying authorities. By Section 222, School Code, "the maximum rate so voted shall be levied, unless the County Board of Education or Board of Trustees shall request a levy at a lower rate." These local school officials may limit that budget to a rate sufficient for the maintenance of the extended term at standards established by the State for the operation of the six months school term. With respect to a district supporting and maintaining a high school, they may submit a budget and request a rate sufficient to maintain and operate its schools for a minimum term of eight months. With respect to a local tax district containing or supporting an elementary school only, they may submit a budget and request a tax rate sufficient to operate the school for such number of months of an extended term as in their judgment and discretion they may determine.

When the budget is so submitted by local school officials, whether it be limited as above stated or includes request for supplementary maintenance, the tax levying authorities may in their discretion limit their approval of the budget so submitted, and levy a rate, sufficient for the extended term in such local tax districts in the same manner and to the same extent as above set out with respect to the submission of such budgets by local school officials.

Summarizing, then, it will be seen that:

(a) The local tax school districts may be abolished and the special school taxes voted therein revoked or removed only by Act of the General Assembly or by vote of the people.

(b) The General Assembly may circumscribe and limit the extent to which these local school taxes may be levied.

(c) The General Assembly has not passed any act abolishing these districts or removing or revoking their special taxes, nor has it conferred power to do so upon any other official boards or bodies, but has conferred power upon local school officials and tax levying authorities with respect to the extent to which such local taxes may be levied.

(d) Local school officials may prepare a budget, and request a levy of the special tax for districts supporting and maintaining a high school at a rate sufficient and limited to maintenance of schools of such district for a minimum extended term of two months, conducted at State standards established for the operation of the six months school term, and tax levying authorities and the State Board of Equalization may limit their approval of such budgets and tax rates to the same extent.

(e) Local school officials may submit a budget and request a tax levy for elementary schools within a local tax district supporting such type of schools only, limited to one or more months of an extended term, and to State standards established for operation of the six months school term, and

tax levying authorities and the State Board of Equalization may limit their approval of such budgets and tax rates to the same extent.

STATE BOARD OF EQUALIZATION—TUITION—TEACHERS SALARIES—INCREMENTS

18 August, 1931.

You submit to me certain inquiries which I undertake to answer as follows:

1. Does the law require that the voucher in payment of the monthly salary of the teacher employed in a special charter district shall be signed by the chairman and by the secretary of the county board of education?

Yes.

2. Where children are transferred by the County Board of Education from rural territory into a special charter district,

(a) Can the Board of Trustees of such special charter district charge tuition or demand additional compensation for these children, either from the State, the county, or the parents of the children?

Not for the six months school term.

(b) Where such special charter districts participate in the tax reduction fund, can they charge tuition or demand additional compensation for the two months extended term?

No, except as modified by the answer to 2(c).

(c) When such children come from local tax territory, can the board of trustees of the special charter district make a demand upon the local tax district for tuition or any additional compensation?

Where children are so transferred under Section 29 of the school machinery act, moneys theretofore allotted from the tax reduction fund to the particular district may be withdrawn and allotted to the district to which the children are transferred. This principle in the general law as expressed in Sections 73a(5), 78 and 150 is naturally and equitably brought forward into the present act with respect to the tax reduction fund. The present act does not disturb the right to make these readjustments and transfer of funds from one local tax district to another as authorized under Section 150 of the school code, where children are so transferred from such district to another.

(d) Can the special charter district authorities demand tuition from any source for the ninth month of school in the event it is operated for that period?

I am of opinion that special and other local tax districts have the right to demand tuition for the ninth month where children from without the taxing district attend that school for this additional month. As the State does not contribute to the support of the school for this ninth month, it cannot be supposed that the General Assembly intended that children from non-special tax territory may attend such school without payment from some source for this service.

3. Is it the duty of the State Board of Equalization to approve the object of general control in the budget of the special charter districts?

No. Heretofore, nothing has been allowed for general control in the distribution of the equalizing fund in special charter districts. It has not been allowed as an element in the support of the six months school term in the allocation of funds to special charter districts out of the county-wide tax for the support of such six months school term. In dealing with the object of general control in Section 6 of the Act of 1931, the language is restricted to such items under such head as relate to general county purposes.

Unless it can be found that a contrary intent is expressed in the legislation of 1931, it is apparent that the State took over the support of the six months school term in the status as the schools then existed. The language of Section 13, and other parts of the new act, is not sufficient to controvert the necessary meaning of Section 6 relating to object of general control and limiting it to the county organization. Of course, the superintendent or superintending principal of a special charter district would be paid his salary for the six months term out of the State fund, as provided for in Section 9 of the Act.

4. In approving the instructional cost in the State budget for the various counties, shall the increments accruing to the teachers' salaries under the present salary schedule, by reason of their additional experience gained through last year's work, be included in this cost?

No. It is quite clear that such was the intent of the General Assembly. It is expressed both in Section 12 of Chapter 430 and again in a separate act, Chapter 454 of 1931.

DISPOSITION OF POLL TAX BY COUNTY TREASURER—DISPOSITION OF FINES, FORFEITURES, PENALTIES AND DOG TAX—CLERK SUPERIOR COURT; 5 PER CENT COMMISSIONS.

16 January, 1932.

I undertake to answer the inquiries contained in your letter of January 15 as follows:

1. What should be done with the poll tax that has been collected by the sheriff and turned over to the county treasurer?

Constitution, Article V, Section 2, directs: "Proceeds of State and county capitation tax shall be applied to purposes of education and support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter purpose." The amount of this State and/or county poll tax as fixed by Section 1 of Article V is \$2.00. By Section 492 of the Revenue Act of 1931 (Chapter 427), the county treasurer is directed to remit to the State Treasurer the proportion of all poll taxes collected and required by the Constitution to be used for educational purposes.

Twenty-five per cent, or 50 cents out of every poll tax collected, should, therefore, be held in the county and used for the support of the poor. The proceeds of the other three-fourths, or \$1.50, of each poll tax so collected

should be remitted by the county treasurer on the 1st and 15th of each month to the State Treasurer, along with the proceeds of the 15 cent State-wide school property tax so being remitted by the county treasurer to the State Treasurer.

2. Should all fines, forfeitures, penalties and dog taxes remain in the county and be turned over to the county school fund?

Yes. By Constitution, Article IX, Section 5, "the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State shall belong to the county school fund. By section 6, subsections 4(a) and 5(a), the objects of maintenance of the plant and fixed charges were directed to be paid by the local unit (the county) out of the funds mentioned in Section 7 of the Act, insofar as they may be sufficient. Section 7 of that Act thereupon designates and sets apart the proceeds of fines, forfeitures, penalties and dog taxes for the objects of maintenance of the plant and fixed charges.

3. Heretofore the Clerk of Court has been taking five per cent of a fine collected and depositing with the county treasurer in the general county fund; this five per cent in this was applied to the payment of the salaries of the county officers. Under the present school law, should this five per cent of a fine be deducted as a part of the cost in a case or not?

The school machinery act of 1931 does not change the general law or the provisions of any public-local act with respect to this. By C. S. 3903 (last paragraph but two), the Clerk of the Superior Court is allowed five per cent commissions on all fines, penalties and amercements paid the clerk by virtue of his office. This Section is, of course, of general application. Unless it has been modified by some public-local act, the Clerk of the Superior Court would have the right to retain the commissions on these collections as therein set out. Where he is serving for fees, he, of course, will be entitled himself to their use. Where he is on salary, and the public-local act directs him to collect all the fees, commissions and emoluments of the office and turn them into a particular fund, the fees and commissions so collected by him would go into the fund designated by such public-local act, unchanged and unmodified by the school machinery act of 1931.

CONSTRUCTION OF SCHOOL MACHINERY ACT, 1931—SIX MONTHS SCHOOL TERM

29 January, 1932.

The School Machinery Act of 1931, Chapter 430, does not in express terms afford exact guidance with respect to all details necessarily incident to the operation of the public schools. It does not articulate with preceding statutes so as to build a structure with parts fitly joined together. It cannot be perfectly ligated with the school code of 1923, nor even with other acts of the General Assembly of 1931.

Construction of the Act, therefore, presents many difficulties. Certain conclusions may be reached by considering it as a whole, keeping in view its general purpose, and relating cognate legislation of the current and preceding General Assemblies to its provisions.

Under the Act the State assumes responsibility for the conduct of the six months school term upon certain established standards. For that purpose the State Board of Equalization is charged with particular duties and clothed with a correlative authority. Other duties and powers are conferred upon or left with local school officials. No difficulty is experienced in determining the limits of State support and the standards set up for that purpose.

No money was appropriated out of State funds for the objects of maintenance of the plant, fixed charges, debt service or capital outlay. Funds for these are to be supplied by the local subdivisions. Counties and districts, through their own tax levies, may supplement support of the six months schools so as to operate them at higher standards than those established by State support, such action to be taken upon approval of the local tax levying authorities and the State Board of Equalization.

The State Board of Equalization does not consolidate school districts. It does determine the number of teachers allowable, and to be paid out of State funds, in the different districts. It may also refuse to include in the State budget teachers for particular schools. Its authority for such action is found in the third paragraph of Section 6 of the School Machinery Act:

The State Board of Equalization may refuse to include in the State budget all or a part of the teachers in any school or schools which may be operated in close proximity to another school of the same type and class, when in the opinion of said board such school could be operated more economically and efficiently if consolidated in whole or in part; but in all such cases said board shall designate the school or schools from which teachers are disallowed.

The County Board of Education is one of the agencies used by the State, under appropriate legislation, in carrying into effect this plan of State support of the six months school term. That board, then, has that authority consequent upon, incident to, and flowing from, the exercise of these permitted powers by the State Board of Equalization. The duties of the county board are thus sufficient for, and limited by, the objects implicit within action taken by the State Board of Equalization.

Acting within the limits of its jurisdiction, the State Board of Equalization declined to allow teachers in three of the Chowan County schools. It did include in the budget for the Chowan High School that number of teachers allowable upon State standards and based upon attendance for the preceding year in the four schools. It also made an allocation of funds for transportation to the Chowan High School of children within the area of the four districts.

This action so taken by the State Board of Equalization is binding upon the Chowan County Board of Education. That board should carry into effect the plans thus made. It has no authority to conduct the constitutional six months school term in some school and at some place for which no teachers have been allotted by the State Board of Equalization. It has no right to spend any of the money allocated for transportation in transporting children to some school or some place other than that for which the allowance was

made. It should expend the State money both for teaching service and transportation at, for, and in the schools for which the allowance for those purposes was made by the State Board of Equalization.

OPINIONS TO COMMISSIONER OF AGRICULTURE

INSPECTION FEE—BAKERIES

28 July, 1930.

Your letter of July 25 received. Section 9 of Chapter 173, Laws of 1921, is brought forward as C. S. 7251(t). Inspection fee required is for "each" public bakery or bakery furnishing bakery products for the public." The language is clear. The inspection fee is to be paid for each place where the business is carried on, and not simply by the individual, regardless of the number of places he may operate.

PURE FOOD ACTS; STATE LAWS REQUIRING LABELS

29 July, 1930.

Your letter of July 25 received. At present, under regulations relating to the Federal pure food and drug act, if sugars other than cane, beet and similar sugars are used in the making of food products or are added to said products, their presence must be stated on the label of the package containing such sugar. It is suggested that the Secretary of Agriculture may change these regulations so as not to require labels on such products showing sugar origin or base. If this is done, is there authority within the State to require such labeling when such goods are sold within the State?

Federal laws of this kind relate primarily to transactions in interstate commerce. No State has the right to infringe upon the exercise of such powers by the Federal Government. It is equally clear that the police powers of the States remain in them. The fourth head-note to *Corn Products Refining Co. v. Eddy*, 249 U. S., 427, 63 L. ed., 689, is as follows:

The prohibition against sales by importing dealers of a proprietary table syrup in the original packages which is made by a regulation of a State board of health, under sanction of the State Food and Drugs Law, unless the principal label shall disclose the ingredients and their proportions, is a valid exercise of the police power of the State, and not an unconstitutional regulation of interstate commerce.

Upon reason and the authority of that case, I am of opinion that authority remains within the State, under the police power, to require proper labeling of sugar products so as to show origin or base as a regulation, when it is sought to sell such goods in the State.

FERTILIZER CONTENT; SUBSTITUTION OF MATERIAL; SUIT AND PENALTY

4 September, 1930.

You ask this office to interpret the amendment attached to the old Section 4690 of the Consolidated Statutes, Chapter 182 of the Public Laws of

1923, particularly as to the rights of the purchaser under contract between him and the manufacturer as set out in the second proviso to said Chapter 182.

The first proviso requires materials supplying nitrogen or ammonia to be divided into two classes, namely: mineral and organic; and the percentage of nitrogen or ammonia coming from either of these classes shall be guaranteed, but allowing a variability of one-fourth of one per cent for goods containing two per cent of ammonia or under, and a variability of one-third of one per cent for goods containing two to three per cent of ammonia, and a variability of one-half of one per cent for goods containing over three per cent of ammonia. It is required that the materials in each of these two classes shall be named on the bag or tag attached thereto, and it shall be permissible for the manufacturer to substitute one or more materials in either class of approximately equal agricultural value for another material of the same class.

Then comes the second proviso, upon which you base request for an opinion from this office. That proviso is as follows:

Provided further, that where there is a contract or agreement between a manufacturer and a purchaser of fertilizer that the fertilizer will be manufactured by the use of certain definite sources and amounts of ammonia and potash, the fertilizer must be manufactured from these materials without the substitution of other materials, and failure on the part of the manufacturer to comply with this requirement shall render such manufacturer liable to the purchaser for damages as is now prescribed by law, and in addition thereto the manufacturer shall pay to the purchaser a penalty equal to one-fourth of the purchase price of such fertilizer.

In the particular case involved, the purchaser of the fertilizer entered into a contract with the manufacturer that the materials supplying ammonia in the particular purchase should be fifty per cent mineral and fifty per cent organic. Instead of complying with this contract, the manufacturer furnished the purchaser with a largely excessive per cent of the mineral material.

It is understood that mineral material produces better effects in dry seasons than in wet, while the organic material produces a better effect in wet seasons than in dry. The crop growing season for 1930 was dry, consequently, the amount of actual damage done the purchaser was much less than it would have been if it had been a wet season.

It is to be observed from the proviso quoted in full above that the fertilizer must be manufactured from the materials specified in the contract, without substitution of other materials. If the manufacturer substitutes other materials, as in the instant case, then the statute gives the purchaser a cause of action

- (1) Damages as now prescribed by law;
- (2) The manufacturer shall pay to the purchaser a penalty equal to one-fourth of the purchase price of such fertilizer.

We think that this penalty may be recovered in a proper action by the purchaser, independent of the actual damages inflicted upon him by the failure of the manufacturer to comply with this contract. It is in effect a

penalty provided in specific terms by the statute for breach of the contract. How, or when, the purchaser shall enforce this statutory penalty is not a question for this office, or for yours, for it is not a penalty which your office can enforce summarily under C. S. 4695.

FARMERS MUTUAL EXCHANGE—LICENSE TAX

30 April, 1931.

You state that the Durham Farmers Mutual Exchange, which was organized under the mutual associations act of this State, has been purchasing soy beans in the eastern part of the State and selling them to a feed company located at Sylva, N. C. You ask whether or not this Farmers Mutual Exchange, under such circumstances, is liable for the license tax imposed by C. S. 4830.

We think clearly so. The only exceptions from that act are farmers selling the seeds raised by themselves. As we understand it, none of these soy beans were raised by the members of this mutual association, but that they were purchased outright and sold as hereinbefore stated.

LINSEED OIL; INSPECTION

12 May, 1931.

You state in your letter of May 7, that linseed oil is shipped by parties out of the State to large mills or other concerns in the State for their own use. You inquire whether or not, in the opinion of this office, such oil, so sold in the State is subject to the inspection laws relating to linseed oil. (Article 13 of Chapter 84 of the Consolidated Statutes 1919.)

Section 4832, of that compilation, defines the object and purpose of the Act in the following words:

SECTION 1. That for the purpose of protection of the people of the State from imposition by the fraudulent sale of adulterated or misbranded linseed oil or flaxseed oil as pure linseed oil or flaxseed oil, the Board of Agriculture shall cause inspection to be made from time to time and samples of such oil offered for sale in the State obtained, and shall cause the same to be analyzed or examined or tested by the oil chemist or other experts of the Department of Agriculture for the purpose of ascertaining or determining if same is adulterated or misbranded within the meaning of this Act or is otherwise offered for sale in violation of this act.

It is true that this transaction is wholly in interstate commerce. So far, however, as the right of the State to inspect products brought into the State is concerned, this fact is not controlling. Very early in the judicial history of the United States Supreme Court, that court, interpreting Article 1, Section 10, Clause 2 of the Constitution of the United States, held that, in the absence of specific legislation by Congress upon the particular subject, the State had authority to protect its citizens in the exercise of its

police power from fraud in the sale of articles in the State. The general rule is thus stated in *Pure Oil Co. vs. Minnesota*, 248 U. S. 158:

In the exercise of its police power, a state may enact inspection laws which are valid if they tend in a direct and substantial manner to promote the public safety and welfare, or to protect the public from frauds and imposition when dealing in articles of general use as to which Congress has not made any conflicting regulation, and a fee reasonably sufficient to pay the cost of such inspection may constitutionally be charged even though the property may be moving in interstate commerce when inspected.

Article 13, then, was enacted in pursuance of this authority. It is not necessary to go over this article section by section in order to show that its main object and intent is to prevent the people of the State from being defrauded by having impure or adulterated linseed oil imposed upon them in the place of a commercially pure product itself. The words of the statute, particularly Section 4835 and Section 4839 are amply broad enough to cover the facts of this case.

Consequently, we think that the North Carolina Inspection Law is applicable to the linseed oil brought into the State or sold in the State, offered for sale in the State or stored in the State for use and that you have authority, in consequence, to apply these laws.

You will find opinion by the Attorney General himself, written to your office on July 6, 1925, to the same effect. See Biennial Report 1924-26, page 231.

SALE OF OLEOMARGARINE

22 April, 1931.

I am in receipt of your letter of April 22, submitting certain questions with respect to Senate Bill No. 154, relating to sale of oleomargarine.

I agree with your view that under Section 3 payment of the \$1,000 license by the manufacturer would not relieve the wholesaler or distributor from paying the \$100 license fee. Of course, and necessarily, the manufacturer, having paid the \$1,000 fee and holding the license, could distribute. The wholesaler or distributor other than the manufacturer would have to pay the \$100 fee.

In collecting the license fee on June 1, or for the remainder of the year, 1931, I think it proper to charge seven-twelfths of the fee. The law makes no direct provision for apportionment of the license fee when the license is sought for less time than a year, but in view of the fact that license could not be obtained before June 1, effective date of the act, and this first license expires on the 31st of December, I am of opinion that the fee for this seven months of 1931 from June 1 to December 31 should be at the rate of seven-twelfths of that paid for the whole year.

STATE FAIR; ONLY RECEIVES APPROPRIATION AFTER DEFICIT ASCERTAINED

29 May, 1931.

Among the specific appropriations made by the recent General Assembly, under the title "Agriculture," is the following:

To State Fair, 1931-32, \$10,000.

To State Fair, 1932-33, \$10,000.

Attached to the appropriations for the Department of Agriculture is the following:

The appropriations made under Title 2 to the State Fair are in addition to the receipts of the State Fair and may only be used to the extent that such receipts are insufficient for the operation of the Fair.

The restriction upon the use of this fund of \$10,000 is so clear and distinct that it requires no construction. In practical effect, it shows that the State Fair must run upon its own momentum; that it must be sufficient for itself until after its operation it is found that its receipts do not balance its expenses. When this is shown, then the \$10,000 appropriated are available to meet the deficit, so far as that sum can do so.

FERTILIZER CONTENT; EXCESS OF CHLORINE; REMEDY OF PURCHASER

16 June, 1931.

From a personal interview with you, it appears that your department is having some difficulty in regard to fertilizer for tobacco. It arises out of the fact that certain manufacturers of tobacco fertilizer have used the ingredient "muriate of potash" to secure the necessary per cent of potash required by the test formula for such tobacco fertilizer. It is understood that the use of this material is cheaper than the use of sulphate of potash, which is the ordinary base from which the essential element of potash is secured for fertilizer. The result of this use of muriate of potash is to produce a fertilizer which tests 4 per cent of chlorine.

It is practically the unanimous opinion of agronomists that chlorine in excess of 2 per cent, speaking generally, is deleterious instead of helpful to tobacco. Tobacco fertilizer, then, containing this 4 per cent instead of being helpful to the growing plant is positively deleterious.

Upon this, you inquire whether or not in the opinion of this office, you are required to apply the summary remedy provided by C. S. Section 4695. That summary remedy is to be administered by you by assessing against the manufacturer any deficiency of plant food contained in the particular fertilizer. You are further authorized to require that twice the value of the deficiency be made good to any person who purchases for his own use such low grade fertilizer. That statute, providing the summary remedy, as hereinbefore said, must, of course, be construed strictly.

In *Fertilizer Works vs. McLawhorn*, 158 N. C., p. 274, the court sustained this summary remedy and held that for the sale of fertilizer material, deficient in quality, an abatement in the price is the measure of damages.

We think this statute does not apply to the instant case. Where muriate of potash is used at all, it is allowed to be used only when it produces not exceeding 2 per cent of chlorine.

The deleterious quality of the particular fertilizer discussed is produced, however, in the instant case, by an excess use of a particular material. The rule provided, then in C. S. 4695 cannot be made applicable to this. The purchaser of the fertilizer, however, has an adequate remedy in a suit for damages against the manufacturer.

There are quite a number of cases which deal with this situation:

Guano Co. vs. Hill Livestock Co., 168 N. C.-442.

Carter vs. McGill, idem 507.

Tomlinson and Co. vs Morgan, 166 N. C.-557.

Swift vs. Etheridge, 190 N. C.-162.

Swift vs. Aydlett, 192 N. C.-330.

The cause of action, of course, would be based upon the implied guarantee that the fertilizer was proper for the purposes intended; that, instead of being beneficial, it was really deleterious to the particular crop for which it was used.

DISTRIBUTING AND WHOLESALING OLEOMARGARINE; DISPLAY OF SIGN UNDER
CHAPTER 299 P. L. 1929

15 September, 1931.

You state that Armour & Company, located in Raleigh, have in their storage plant, oleomargarine marked and designated for other people, which oleomargarine is delivered from the Raleigh storage plant. They are also taking orders and carrying records of the sale and delivery of oleomargarine in these particular territories and say they are acting as agents for the Chicago office. They also deliver on contract and ship in bulk to some State institutions.

1st. Under the facts stated in your letter, I am of opinion that Armour & Company, through the branch located in Raleigh, are wholesalers and distributors within the meaning of Section 3, Chapter 229 Public Laws 1931, and subject to the tax therein named.

2nd. The sign required to be displayed, under Section 4, is one required to be displayed in dining rooms, cafes and hotels where oleomargarine is served as a food, and it would not, therefore, apply to a bakery using oleomargarine in the manufacture of their products.

"OLEOMARGARINE"—DISPLAYING SIGN

28 September, 1931.

You submit to me inquiry of September 24 as to whether a public eating house must supply the sign, "Oleomargarine served here," under Chapter

229, Public Laws of 1931, if oleomargarine is used in the kitchen for cooking purposes, and not served with the meal as butter.

Section 4 of that Act is as follows:

It shall be unlawful for any person or any agent thereof to sell or offer, or expose for sale, or have in possession with intent to sell, any oleomargarine not in imitation of yellow butter which is not marked and distinguished by the word oleomargarine on the outside of each tub, package, or parcel. A placard with the words, *Oleomargarine Served Here*, printed in Gothic letters one inch long, shall be displayed in some conspicuous place in each dining-room, cafe, hotel, or wherever oleomargarine is served to the public as a food.

You will note that the sign must be displayed in the manner therein set out in a conspicuous place in the dining-room, cafe or hotel where oleomargarine "is served to the public as a food." From the language of the statute it appears, then, that the sign is not necessary where the oleomargarine is not served as a food, but simply used in the kitchen in cooking.

OLEOMARGARINE—PAYMENT OF LICENSE

13 November, 1931.

Your letter of November 10 received. Chapter 229, Public Laws of 1931, regulating the sale of oleomargarine, does not specifically require payment of the license at each place of manufacture or each place of distribution. Usually, where it is intended to require such payment at each place where the business is carried on, specific provision for it is made in the statute. That not having been done here, I am of opinion that the single payment by, and license to, the manufacturer and distributor is all that is required, and that the law does not contemplate payment of such license at each place where the business is carried on.

REGULATION MILK TESTING, INSTALLATION BABCOCK SYSTEM; LICENSED MILK TESTERS; USE OF BABCOCK METHOD

19 February, 1932.

In your letter, you have submitted certain "regulations for Dairy Division," the principal feature of which is the requirement that the Babcock Method of determining the percentage of butterfat in milk, cream or other dairy products shall be used in the purchase of those products by persons and concerns for re-sale and that a licensed milk tester, using this method, shall be exclusively employed by such dealer. This milk tester is only allowed to operate upon the payment of the \$3.00 license fee and the form of license to be issued accompanies these rules and regulations. This, if done, will be under authority of Sections 5 and 8, Chapter 169, Public Laws 1921.

Section 5 of this act requires that creameries and factories, purchasing milk and cream from producers on the butter fat basis, who pay for the same on their own test, shall make and pay on correct test. It further requires that the Board of Agriculture, under the regulations provided for

in Section 8, shall have such test made of the milk and cream so sold as to show that dishonest tests and practices are not used.

Section 8, referring to standards of purity and sanitation, provides that the Board of Agriculture shall establish standards of purity and sanitation and adopt regulations as may be necessary to make the act effective and insure the proper enforcement of the same.

I can see no authority in this act for the making and enforcement of the regulations, which you propose. In my opinion, the authority of the Board of Agriculture, with respect to Section 5, does not extend further than that of making its own tests, to ascertain whether or not the tests in use by the dealer are correct, nor do I think that, under Section 8, there is any authority for establishing a regulation by which a licensed tester using a specific method must be employed by the dealer. I further think that the requirement of the \$3.00 fee for license of such milk tester would be in the nature of an imposition of a tax upon a business which could only be done by direct legislative enactment.

I think you can readily see that the requirements which you suggest establishing are more than regulations; and while they might be more efficient in producing the result which is aimed at by the statute, nevertheless, I do not see that they are so necessary as to confer such a power upon the Board by way of implication, in order to carry out the other declared powers and purposes of the act.

As to the fourth inquiry, in the last paragraph of your letter, I should say that the principles contained in the United States Department of Agriculture pamphlet, on chemical testing of milk and cream, might be used as the basic principle on which to operate the creameries and milk plants in North Carolina, when officially adopted, except, of course, as this may be qualified by the foregoing observations.

FERTILIZING MATERIAL; CONTRACT BETWEEN COMPANY AND PURCHASER

12 March 1932.

Your letter of March 1 with enclosure, letter of February 26 from G. Ober & Sons Company, received.

This concern proposes to sell the fertilizing material, such as acid, dried blood, nitrate of soda, etc., to the purchaser and then make contract with the purchaser to mix it for him. Under the plan the fertilizing material would be branded and tagged in accordance with the statute. The mixture as put up under the contract between the company and the purchaser would be tagged and inspection fees paid thereon. However, such mixture would not be registered, branded or contain any analysis or guarantee thereon.

In my opinion, such a procedure is not permissible under our laws.

CRIMINAL LIABILITY FOR VIOLATION UNIFORM WEIGHTS AND MEASURES ACT

27 April, 1932.

You refer to this department Chapter 261, Public Laws 1927, and amendments, with a view to ascertaining the criminal liability of persons owning

or operating filling stations for violations of the law. You instance such violations of the law as broken seals and incorrect measurement, illegal equipment and attachments on measuring devices, improper use of legal measuring devices and wrong measurement with legal equipment and matters of that kind. You give as instances the case where a corporation owns the filling station, or has leased it, owns all pumps and equipment, keeps up repairs, adjusts and seals all measures or measuring devices, or sub-leases or turns over to another to operate on a salary, commission or consigned stock basis.

In my opinion, all of the persons mentioned, who knowingly engage in the practices mentioned in your letter would be guilty of a violation of the law, irrespective of their relation to the business being operated, or the ownership of the property.

In answer to your last question, I could not say whether the operator who owns no part or parcel of station equipment or stock would be considered an agent of the corporation. It would depend too much upon the exact nature of the contract for me to give an opinion without seeing it. However, the criminal liability of the company not concerned in the actual sale or measurement would be confined, in my opinion, to a knowledge of the imperfections or illegality of the measuring devices they are representing and not to the operations, unless the latter were carried on through direct participation of the company or an agent, with its knowledge.

STATE FAIR; DUTY OF BOARD OF AGRICULTURE TO CONDUCT

26 May, 1932.

In reply to the inquiry submitted by you and the Board of Agriculture today, I have to say that in my opinion, under Chapter 209, Public Laws of 1927, as amended by Chapter 360, Public Laws of 1931, it is the duty of the Board of Agriculture to conduct annually a State Fair on the State Fair grounds at Raleigh.

OPINIONS TO CORPORATION COMMISSION

10 PER CENT CUT; CHIEF CLERK, CORPORATION COMMISSION

6 July, 1931.

Your letter of June 26 received. The Appropriation Act, Section 20, Chapter 429, Public Laws of 1931, directs, beginning July 1, 1931, a cut of 10 per cent in the total of all salaries, wages, fees or other compensation paid to officers and employees or agents of spending agencies of the State subject to certain exceptions. The intent of the act is further expressed as being that the total of such expenditures shall be reduced in the aggregate for each spending agency at least 10 per cent.

Adjustments in these salaries may be made under said Section 20, and Chapter 277, Public Laws of 1931, in the manner as therein set out. Pending action for such readjustments under these provisions of the law, the Director of Personnel has directed that the cut in such salaries be applied uniformly on the basis of 10 per cent to the salaries affected.

I am of opinion, then, that for the present the salary of your Chief Clerk would be cut 10 per cent from the salary which he was receiving for the month of June, 1931.

UNAUTHORIZED PRACTICE OF LAW; RATE EXPERTS APPEARING BEFORE THE CORPORATION COMMISSION; CHAPTER 157, PUBLIC LAWS 1931

29 August, 1931

I will undertake to answer yours of this date relating to the appearance before the Corporation Commission of traffic and rate experts, who are not licensed attorneys at law, and who are employed and paid for this service by various associations in North Carolina and elsewhere.

I understand your inquiry to be (a) whether these experts, in so doing, violate Chapter 157, Public Laws of 1931, (an act to prohibit the unauthorized practice of law in North Carolina), and (b) whether this law prohibits the appearance before the Corporation Commission of those regularly employed by any corporation to represent said corporation before the Commission.

Chapter 157, Public Laws 1931, referred to, makes it unlawful:

For any corporation or any person or association of persons, except members of the Bar of the State of North Carolina, admitted and licensed to practice as attorneys at law, to appear as attorney or counsellor-at-law in any action or proceeding in any court of this State, or before a judicial body, or the North Carolina Industrial Commission; to maintain, conduct or defend the same, except in his own behalf as party thereto.

Realizing that the members of the Corporation Commission, as lawyers, may not agree with the result that I finally reach, I have thought that

it might be useful to you to discuss the statute and its application at some length, as you might apply it differently. When is a person appearing as an attorney or counsellor-at-law?

No one can stultify the law and immunize himself from its operation by a disclaimer—simply by saying “I do not claim to be a lawyer,” or “I am not appearing professionally.” When he is performing the duties of an attorney at law, exercising the functions which are commonly understood to be essential to that profession, he is appearing “as an attorney at law.” Then in determining this question it may be necessary to inquire: What is an attorney at law, and when is he acting as such?

None of the definitions given in the authorities are entirely satisfactory, but I think they are sufficient for our purpose.

(Attorney) is an ancient English word, and signifieth one that is set in the turne, stead, or place of another: and of these some be private * * * and some be publike, as attorneys at law. Coke Litt. 51b.

In *National Savings Bank v. Ward*, 100 U. S., 195, it is said:

Persons acting professionally in legal formalities, negotiations or proceedings by warrant or authority of their clients, may be regarded as attorneys at law, within the meaning of that designation as used in this country.

The practice of law is of unknown antiquity, but some idea of the duties and functions of an attorney or counsellor-at-law may be gotten from the history of this profession, as it comes to us through the laws and courts of England, from which our own definitions are derived. In England an attorney at law was, according to Blackstone: “One who is put in the place, stead or turn of another, to manage his matters of law.” They were almost always solicitors as well. What is said about the distinction between solicitors and barristers, as laid down by one authority may be useful to us in the present connection: “The main employment of a barrister is that of an advocate. The general duties of a solicitor are, as a rule, opposite to those of a barrister. The solicitor is the one who obtains the client, listens to his complaints, advises him as to his remedy, sees the witnesses, takes down the evidence, draws the briefs, and performs the one hundred and one other details incident to an action at law; and it is only when these are completed that the action passes from his hands to the barrister for argument in court.” 19 Am. Law Rev., 677, 695.

There is now no practical distinction made in this country, either in the courts of the United States, or those of the several states, between solicitors, barristers, and attorneys at law. An attorney at law is all three in one. Referring to the quotation from the American Law Review, we now see the lawyer of whom Chaucer wrote, (time A. D. 1386):

Nowher so bisy a man there nas
And yet he semed bisier than he was

revealed to us a very busy man indeed. In his role as barrister, in which he seems to be at the peak of his profession, his duties are not so varied

or extended, but are even more characteristic and classifying. What he does as barrister throws most light on our inquiry.

In the sessions of the higher courts, practice and procedure have fallen into definite ruts, over which they are seldom jolted. The principles are cast within narrow limits of rule and precedent. When a court is proceeding with the trial, the *dramatis personae* are fixed and determined. Not mentioning such unimportant participants as a clerk, the court crier and the litigant parties, we have four characters only: the judge, the jury, the witness and last, but not least, the attorney and counsellor-at-law. Now, if any person should arise to enlighten or advise the court, or contend with the jury, we would be bound to classify his performance as "an appearance as an attorney at law," that is, unless it happened to be one of those rare instances in which some litigant sought fit to challenge a well-known adage, by appearing for himself.

But I do not think a quasi judicial body is ordinarily bound by such rigid proceeding, as its hearings are largely investigations. I do not mean, of course, that such a body or board could suspend or repeal the law by any permission it might give, or latitude it might allow, but I can readily understand how the testimony or information given by an expert, sworn or unsworn, might take on a character quite at variance with the recognized rules and evidence in the court of law, and yet not properly subject such expert to a charge for appearing as an attorney at law.

If we concede that the Corporation Commission is a "judicial body," within the meaning of the statute, such expert would probably violate this law, if he attempted to systematize, analyze or arraign the facts of the evidence, correlate and compare them with each other, or conditions outside the record, apply them to the law or the practice and rules of courts or other similar bodies; in short, argue the case for the purpose of persuasion or to produce conviction in the minds of the members of the body, to be reflected in its orders or judgment. He could only go so far—he is not supposed to "steal the show." Still, for the sake of argument, conceding that the board is a "judicial body," he could not become an advocate.

But, I am of opinion that, under the decisions of the courts, the Corporation Commission cannot qualify as a "judicial body," within the meaning of the statute, even when acting upon a matter within its jurisdiction, requiring the exercise of discretion and leading to a judicial determination. I think the courts might have decided differently, but they did not. In *State v. Railroad Commission*, 79 Fla., 526, the court said:

In fixing rates to be charged by railroads, common carriers, for transporting persons and property, the railroad commissioners exercise a quasi legislative function, sometimes regarded as being administrative but not judicial in its nature.

In *Hoyt v. Hughes County*, 32 S. D., 117, it is said:

The term "quasi judicial" is generally used to describe acts of public boards and municipal officers as the result of investigation and rational judgment, based upon evidentiary facts, in a matter within the discretionary power of the board or officers. But "quasi

judicial" power is only involving judgment and discretion and which may be conferred upon an executive or administrative board as an incident to its duties.

In *Corporation Commission v. R. R.*, 170 N. C. 560, at page 563, Justice Brown, speaking for the court, says:

The Commission is not a judicial court but an administrative agency of the State, possessing certain *quasi* judicial and legislative powers.

The decision in *Corporation Commission v. R. R.*, 151 N. C. 447, supports this view.

I am advertent to the fact that the term used in the opinion referred to is "judicial court," while the language of the statute is "judicial body," but I can see no distinction which can be maintained on principle. For that reason, I am of opinion that the above quoted section, Chapter 157, prohibiting certain appearances before a "judicial body" is not applicable. However, I do not mean to say that, under certain circumstances, such a rate expert might not violate this law, even before such a body. It is comprehensive; and in another part of the section makes it unlawful "for any person or association of persons, except members of the Bar, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services," etc. This is a matter which can be inquired of as it transpires. It is as impossible to determine it in advance, as it is for a botanist to classify a flower he has never seen.

In so far as this statute is concerned, I can make no distinction between a person who is employed to represent a corporation in a special instance and one who is regularly employed to represent it in all such cases.

BUSSES; FRANCHISE OR LICENSE TAX; TOWNS

20 November, 1931.

Your letter of November 19 received. Subsection (e) of section 209 Chapter 427, Public Laws of 1931 (the Revenue Act) concludes as follows:

Nor shall any county, city or town impose a franchise tax, license tax or other fee upon them.

It is abundantly clear from this quoted part of the statute that a town may not levy a franchise or license tax on the bus carriers referred to and described in that section, either by attempting to place such tax on the bus station, ticket office, or otherwise.

OPINIONS TO INSURANCE COMMISSIONER

FIRE LIMITS; BUILDING PERMITS

4 November, 1930.

In your letter of November 3, you ask us to interpret certain words used in sections of the Consolidated Statutes, that relate to the regulation of buildings within the fire limits of a town, which comes within the description of towns to which the statute is applicable i. e. those having over 1,000 inhabitants, according to the last United States census. (C. S. Section 2776.)

Section 2750 is as follows:

Frame buildings within fire limits. Within the fire limits of cities and towns, where this article applies, as established and defined, no frame or wooden building shall be hereafter erected, altered, repaired or moved, except upon the permit of the building inspector, approved by the Insurance Commissioner.

Section 2802 contains authority to establish fire limits. It is as follows:

The governing body may establish and maintain fire limits in the city, in which it shall be unlawful to erect, alter and repair wooden buildings, or structures or additions thereto; it may also prohibit the removal of wooden buildings or structures of any kind into such limits, or from one place to another within the limits, and make such other regulations as may be deemed best for the prevention and extinguishment of fires.

This section is located in another article of the Consolidated Statutes, Article 15, and was enacted after the previously quoted Section 2750.

In the former article, too, is Section 2746, which requires, in mandatory terms, fire limits to be established.

It is noticeable that the terms used in Section 2802 are permissive on their face. As to this feature of the two sections, we are clear that, notwithstanding the permissive terms of 2802, the mandatory terms, in regard to the establishment of fire limits, contained in Section 2746, control. The fire limits, then, must be established.

Interpreting the other provisions of Sections 2750 and 2802 together, the established way of interpreting such acts, we think that the mandatory provisions of Section 2750 are still effective.

Section 2750, however, lays down the general rule, without stating how the permit of the building inspector is to be obtained.

Section 2802 then steps in and authorizes the governing body to make rules and regulations as to how and when, and under what conditions wooden buildings or structures of any kind may be moved into such limits or from one place to another within such limits and, also, to make such regulations as it may deem best for the prevention and extinguishment of fires.

We think, then, that Section 2802 was enacted to provide the machinery through, and by which, Section 2750, should be carried into effect.

In one of the towns in the State of North Carolina, which has fire limits under the statute, it is now proposed to repair an open wooden platform, which has been located, and is now located, within its fire limits. The particular town has not adopted a rule or regulation which is applicable to any other structure than a building. In fact, the regulation adopted is adopted by the use of the terms contained in Section 2750 and not those contained in Section 2802.

Upon this, you inquire whether or not such open platform is a building within the meaning of Section 2750 and the regulation adopted in accordance therewith, so as to require a permit of the building inspector of the town for its repair.

The English language has its imperfections, so sometimes its terms, as used in a statute, do not conform strictly to the definition of those terms, as contained in the dictionary. To determine, then, the meaning of the term "building," as used in Section 2750, we must consider the context of the statute, as well as the purpose and object for which the statute was enacted. The context of this particular statute, shows that it is dealing with buildings as erections for commercial or domestic purposes, such as stores, warehouses, offices, dwellings, etc. The purpose and intent of the act was to protect such erections or buildings from the dangers of fire, as much as is humanly possible.

We should, therefore, be inclined to hold an open platform, erected in fire limits, which is so large as to constitute it a distinct menace to other buildings within the fire limits, as coming within the definition of "building," contained in Section 2750. If, however, it does not increase the fire hazard, as you suggest in your letter, we think we should adopt another definition of building, as meaning only a permanent structure, for the purposes hereinbefore set out. There can be no doubt that, under Section 2802, the governing authorities of this town could pass regulations or ordinances, which would apply to wooden platforms of any kind erected, repaired, etc., within the fire limits. That it has not done so, in the instant case, would prevent their action as to the particular platform, unless the platform, itself, constitutes, in fact, a fire hazard.

There are two or three shades of meaning to the word "structure." It may mean a building much more imposing in its character than an ordinary building; it may mean an erection of any kind, whether enclosed or not, or whether used temporarily or not. It is quite probable that it was used by the General Assembly, in Section 2802, as extending the authority of the town to prohibit erections of the latter class—that is, they are too insignificant to come within the strict meaning of the term building.

In conclusion, then, we think this platform must be of such character as to constitute it, within any reasonable interpretation, a fire hazard, to enable the town to require a permit before it should be repaired.

BUILDINGS—PERMITS

28 July, 1931.

You inquire whether it is necessary to have a permit to repair a building by putting a new roof on it.

C. S. 2748 requires permit from a building inspector for the erection of a building. In detail, the section sets out the nature of this permit and requirements for compliance with it.

A portion of C. S. 2749 is as follows:

All rules, regulations and requirements contained in the building law, or set out in this article in regard to the erection of buildings, or any part thereof, shall apply also where any building or walls, or any part thereof, is proposed to be raised, altered, repaired, or added to, in order that the objects of the law may be accomplished and deficiencies and menaces to the safety of the city or town may not be made or perpetuated.

A portion of C. S. 2773 is this:

No building now or hereafter built shall be altered, repaired or moved, until it has been examined and approved by the inspector as being in a good and safe condition to be altered as proposed, and the alteration, repair or change so made shall conform to the provisions of the law.

In *State v. Ewbank*, 154 N. C., 495, the Court quotes the above from C. S. 3310 as authority for the issuance of a permit to the owner for the purpose of making repairs to a building. Therefore, I conclude that it is necessary for one to have permit to alter or repair a building, and certainly, putting a new roof on it would come within these terms.

FIRE INSURANCE—MUTUAL

31 December, 1931.

Inquiry reaches this office from you and others as to proper construction of C. S. 6360. Certain mutual fire insurance companies operate in not more than two adjacent counties. Are they required to put up \$5,000 in bonds for the protection of their obligations?

We go back to the original act from which C. S. 6360 was taken. That section was rewritten by Chapter 119, Public Laws of 1931. The main body of the section requires deposit by certain insurance companies, associations, orders or societies of \$5,000 in bonds for the protection of their obligations. The first proviso is to the effect that "this shall not apply to companies, associations and orders doing business in not more than two adjacent counties." A subsequent proviso permits certain ones of such companies, associations, orders or societies required to make such deposit, to do so in semi-annual installments of \$500 each. I have reached the conclusion that the proviso quoted above takes out of the requirement of the section those companies, associations or orders doing business in not more than two adjacent counties and that, therefore, those so described in that proviso are not required to put up a deposit of bonds for the protection of their obligations.

OPINIONS TO COMMISSIONER OF REVENUE AND STATE TAX COMMISSION

STATE ENGINEER EMPLOYEE; TAXABLE UNDER SEC. 109 REVENUE ACT

7 July, 1930.

It seems to us that the test to be applied in determining whether or not a State engineer employee is taxable under Section 109 of the Revenue Act, is this:

Is he exercising, in his employment by the State, the profession whose exercise is taxed in Section 109. In other words, would he have been employed by the State to do the particular work, if he were not a qualified engineer?

If Mr. Stewart does not come within this rule, we think he would be not liable to the tax. If he does, he is liable.

We return herewith Mr. Stewart's letter.

INCOME DERIVED FROM JOINT STOCK LAND BANK BONDS EXEMPT FROM TAXATION

8 August, 1930.

We have examined the papers enclosed in yours of August 8 and have come to the conclusion that the contention of the Commercial and Savings Bank of Lexington, North Carolina, that its income derived from Joint Stock Land Bank Bonds is exempt from taxation, is clearly correct.

U. S. C. A., Title 12, Section 931 declares this exemption in express terms as follows:

First mortgages executed to Federal Land Banks, or to Joint Stock Land Banks and farm loan bonds, issued under the provisions of this chapter, shall be deemed held to be instrumentalities of the government of the United States, and as such they and the income derived therefrom shall be exempt from the Federal, State, municipal and local taxation.

It is, of course, otherwise as to the income from dividends of the American Tobacco Company and the Virginia-Carolina Chemical Company.

INCOME TAX—DOMESTIC CORPORATION

20 September, 1930.

The Foreman-Derrickson Veneer Company, Incorporated, is a domestic corporation. The Fred F. Ames Company, accountants, claim that Subsection 10 of Section 323 of the Revenue Act of 1929 is unconstitutional in its application to this particular company. Stated shortly, their contention is this: The company, coming within the express provisions of Subsection 10, would be paying an income tax of 4½ per cent to the State of North Caro-

lina upon the whole of its net income, whereas, that portion of its business, located in Virginia, upon which it pays income, has to pay only 3 per cent. The deduction allowed then, in Section 10, leaves still a tax of $1\frac{1}{2}$ per cent upon income earned in Virginia.

This is true, but the company being a domestic corporation, the act itself would be in no sense unconstitutional. So far as a resident corporation or resident individual is concerned, the State may tax the whole of its income, without determining from what source it is derived.

Section 316 declares the words "net income" to mean the gross income of a taxpayer, less the deductions allowed by this act. One of the deductions allowed, as found in Subsection 10, is the income tax which he pays upon the company's business in Virginia. This is, of course, for the benefit of the taxpayer and permits him to claim this deduction to avoid what might be called double taxation. The resident—both the individual and the corporation—pays taxes upon his net income, as defined in the act. Certainly, it seems clear that this corporation cannot successfully set up a claim that the income tax law of 1929 is unconstitutional, because it does not deduct the tax upon income earned in Virginia at the rate—not of the State of Virginia, but of that of North Carolina.

Messrs. Ames & Company, in reality, are attempting to apply to a domestic corporation the rule for determining the net income which applies strictly to non-resident corporations and, in this, they are wrong.

LIEN UPON REAL ESTATE; GASOLINE TAX

7 October, 1930.

We think that section 12 of the Gasoline Tax Law, Chapter 93, Public Laws 1927, furnishes an exclusive remedy for the collection of gasoline tax in arrears. The Legislature there was dealing specifically and particularly with the recovery of these taxes. The very fact that it declares in the last clause of the section:

"All remedies now or which may hereafter be given by the laws of the State of North Carolina for the collection of taxes, are expressly given herein for the collection of the judgment recovered by the State Treasurer under this section," postpones any enforcement of the lien of taxes by levy upon property of the taxpayer until final judgment is obtained in a suit by the State Treasurer.

This rule, we think, does not affect the lien given upon the real estate of the taxpayer for taxes themselves, under Chapter 306 of the Public Laws 1929.

WORLD WAR VETERAN; INSURANCE POLICY; DISTRIBUTION; INHERITANCE TAX

21 November, 1930.

E. H. F., a World War veteran, had a \$10,000 policy of War Risk Insurance at the time he was killed in action, October 8, 1918. His mother, Han-

nah F. F., was beneficiary, under this policy. Hannah F. F. died intestate October 29, 1929, her husband, Philip B. F., surviving her, and one son and one daughter. In January, 1930, Lillian R. F. qualified as administratrix of the estate of E. H. F., the deceased veteran, and as such, collected from the United States Veterans Bureau the sum of \$5,306.

How is this amount to be distributed, and what is the inheritance tax upon it?

At the time of E. H. F.'s death, October 8, 1918, the \$10,000 passed to his father and mother, Philip B. F., and Hannah F. F., in equal portions. Under the Act of Congress, the total \$10,000 was payable to the mother, as beneficiary, by instalments of \$57.50 per month, for such period of time as would exhaust the \$10,000. These payments of \$57.50 were made to the mother, then, until her death, October 29, 1929. This left a balance of \$5,306, which was the present value of the monthly instalments thereafter payable. The father, Philip B. F., took one-half of this amount, as distributee of his deceased son, E. H. F. The other one-half of this sum went to the deceased mother, as distributee of her veteran son. At the death of the mother, the father took one-third of the mother's interest and the brother and sister each one-third of the same.

Stating the figures, the father's interest is \$3,537 $\frac{1}{3}$, the brother's interest is \$884 $\frac{1}{3}$ and the sister's interest \$884 $\frac{1}{3}$. This seems to be the effect of

Trust Company vs. Brinkley, 196 N. C.-40.

In Re Estate of Pruden, 199 N. C.-256.

Grady vs. Holl, 199 N. C.-666.

The inheritance tax can be easily calculated upon these figures.

CHAIN STORE TAX

9 December, 1930

The Carolina Gas & Electric Company is a public service corporation, furnishing gas and electricity in the towns of Kinston, Greenville, Washington, New Bern, Goldsboro and Fayetteville. In connection with this business, it maintains a store and office in each of these towns, from which sales of electric appliances, gas fixtures, stoves and the accessories to the stoves are made. These sales are all made by retail.

Section 162 of the Revenue Act of 1929, Chapter 345, taxes the occupation of operating branch or chain stores in North Carolina in the following words:

Every person, firm or corporation engaged in the business of operating or maintaining in this State, under the same general management, supervision, or ownership, two or more stores or mercantile establishments where goods, wares, and/or merchandise is sold or offered for sale at retail shall be deemed a branch or chain store operator, shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business of a branch or chain store operator, and shall pay for such license fifty dollars (\$50.00) on each and every such store operated in this State in excess of one.

The Carolina Gas & Electric Company, then, operates under the same general management, supervision or ownership, two or more stores or mercantile establishments, where goods, wares and merchandise are sold or held for sale at retail. It cannot be contended that these gas stoves and fixtures, electric stoves and fixtures and electrical appliances and gas appliances are not goods, wares and merchandise, for such dealing with them, i.e., at retail and from a store or place in which they are kept in quantities, makes them so.

It is contended that these sales are merely incidental to the business of furnishing gas to consumers. This retail business, however, is, in no sense, incident to this public service. It is not serving the public in the sale of these wares, but is conducting a business that is as distinctly private as that of any other merchant in the towns concerned. Nor does the fact that it pays a franchise tax for the privilege of conducting a public service corporation in any way affect this conclusion. The tax there is for the privilege of operating a public service utility. It is not, in any sense, an occupation tax upon the private business which it conducts in connection with its public service, but which constitutes no part of that public service in such way that the prices charged by it for these goods could be regulated by the State.

CHAIN STORE TAX—WAREHOUSES

23 April, 1931.

You state that there are certain chain store operators in North Carolina, who maintain a warehouse at a central point from which they supply to their numerous retail stores cereal or carbonated beverages, manufactured or bottled outside of the State. You request of this office an opinion as to whether such chain store operators come within the provision of Subsection (c) or of Subsection (d) of Section 134 of the Revenue Act of 1929.

Subsection (c) taxes the business of supplying to retail stores cereal or carbonated beverages manufactured or bottled within the State. Subsection (d) taxes the same privilege, where the beverages are manufactured or bottled outside of the State.

Under a cognate Section of the Revenue Act of 1927, Section 134, it may well be held that the privilege of doing this business was not taxed. The only term used in Subsection (b) of that Section, which by a liberal construction might be held to apply to this business, was the term "distributing." This very serious doubt upon the act of 1927 caused the General Assembly of 1929 to change the law so as to read (Subsection (d)), "Every distributing warehouse selling *or supplying* to retail stores cereal or carbonated beverages, manufactured or bottled outside of the State shall pay the annual license tax for the privilege of doing business in the State provided in Subsection (b) of this Section."

Where, therefore, the beverages thus described, held in a distributing warehouse, are supplied to retail stores, whether belonging to the same firm as conducts the distributing warehouse or not, the words of the act as written in 1929 unquestionably cover the particular business for which

the privilege tax is imposed. There could be no explanation of the change in the statute, particularly that which adds the word "supplying" to it, without putting upon it the interpretation that the General Assembly intended to tax this particular privilege. The term "supplying" in the later act could not be controlled by its context so as to limit the supply to retail stores belonging to others than the owner of the distributing warehouse.

We think, therefore, that the act of 1929 intended to, and does, tax the particular business described hereinbefore. It may be said, however, that Section 144 of the Revenue Act of 1929 taxes, also, the retail sale of these bottled carbonated drinks and, consequently, to tax the same firm by reason of its distribution of carbonated drinks from a distributing warehouse, under Section 134, would be double taxation, and the construction herein set out would not be admissible. To this, however, there are two answers:

1st. The wholesale supplying of carbonated drinks is a wholly separate and distinct business from the retail selling;

2nd. The tax imposed upon retail dealers of carbonated drinks in Section 144 is nominal—only \$5.00 per year, but counties cannot tax this privilege and cities and towns can levy only one-half of the tax levied by the State.

It is true that this tax of \$5.00 is to be paid at each retail store where such bottled drinks are sold.

See, *Bottling Co. v. Doughton*, 196 N. C. 791.

Yet if this tax for supplying by wholesale is not levied upon a distributing warehouse located in the State, there would be undue discrimination against distributing warehouses which sell to retail stores such bottled drinks, when those retail stores are not owned by wholesale distributors. They would have to pay the tax provided in Subsection (b) of Section 134, while the chain store distributors would not have to pay it.

No reason occurs to us why the act of 1929, thus interpreted, should be held to be unconstitutional.

TAXATION—CONTRACTORS

21 May, 1931.

You ask an opinion from this office upon the following statement:

It seems that the city of High Point has recently erected a new High School building. The contract for the erection of the structure was awarded to a regular general contractor. As a separate and distinct project, however, bids were called for by school authorities for the plumbing, lighting and heating installation. It seems, also, that the Bryant Electrical Company of High Point made a bid to install the electrical wiring and furnish the material therefor in the building. The amount of this bid exceeded \$10,000. The Industrial Electric & Machine Company of High Point, also bid upon the electrical wiring of the High School, the amount of its bid being in excess of \$10,000. The Beeson Hardware Company and Superior Heating & Plumbing Company also bid to furnish and install in the city school, upon request, plumbing and heating, and the bid in this case exceeded \$10,000.

Section 155 of the Revenue Act of 1929 imposes an annual license tax, graduated according to the number of persons employed, upon plumbers, steam and gas fitters, and installers of electrical equipment. This annual license tax runs from \$20.00 to \$100.00.

Section 122 of the Revenue Act imposes, in Subsection (a), a project tax upon contractors bidding to do certain work, where the cost of the work exceeds \$10,000. For each such project, the contractor is to pay a license tax of \$100.00, whether the work will be completed within less than one year, one year, or more than one year.

The contention of your department is that the companies, hereinbefore referred to, who made bids, as hereinbefore said, for the electrical equipment and plumbing and heating of the High Point High School, are subject, in addition to the electrician and plumbing license tax, paid by them, to the contractor's project tax of Section 122. You inquire whether this construction of the act by your office is correct.

We think not. It is entirely reasonable, in the first place, to construe Section 122 of the Revenue Act of 1929 with the definition of "contractor" contained in Section 1 of Chapter 318 of the Public Laws 1925:

A general contractor is defined to be one who, for a fixed price or fee, undertakes to construct buildings, highways or other structures in accordance with plans and specifications prepared by a licensed architect or registered engineer, where the cost of the completed structure is in excess of \$10,000.

The Section imposing an annual license tax on construction companies first appeared in the Revenue Act of 1925 as Section 45a. In describing the contractors upon whom the license is imposed, the Revenue Act of 1925, in practical effect, adopts the definition of above quoted Section from Chapter 318. It is evident, therefore, that the authors of this Section in the Revenue Act had before them the definition of a general contractor contained in the general contractor's act and hereinbefore quoted.

In 1927, the Section in the Revenue Act was re-written and broadened so as to cover projects which the previous Section of the Revenue Act of 1925 did not cover. The first clause in the Act of 1927 is identical with Subsection (a) of Section 122 of the Revenue Act of 1929, which is as follows:

Every person, firm, or corporation who, for a fixed price, commission, fee, or wage, offers or bids to construct any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, electric or steam railway, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof, the cost of which exceeds the sum of ten thousand dollars (\$10,000), shall apply for and obtain from the Commissioner of Revenue an annual State-wide license and shall pay for such license a tax of one hundred dollars (\$100.00) at the time of or prior to offering or submitting any bid on any of the above enumerated projects.

It is claimed that the words "or other improvement or structure or any part thereof" include the installation of electric light and plumbing system in a structure being erected or already erected. We think, however,

that these words are to be interpreted in connection with the context. In other words, they mean other improvement or structure of a similar character to those therein above set out. By no reasonable interpretation could any of the designated objects of contract be extended to the installation of an electric or plumbing system in a building or structure.

It is clear, also, that Section 155 deals specifically with the particular business of installing an electric equipment or a plumbing system at any place. The license there provided covers the whole of this business. No one could do the business described therein, without having the power to contract. The license tax provided therein is not graduated according to the amount of the contract, but according to the number of employees. So, therefore, that a person doing this work, for which he has license, must, when he exceeds \$10,000 contract, take out an additional license as contractor, would write into the Section a qualification not made by the Legislature itself.

It is entirely clear, also, that to take a contract exceeding the sum of \$10,000 would not be a separate employment from that in which the contract price was \$9,000. It is identically the same employment, under identically the same license. Consequently, Section 183 would not add any force to the view that all these electrical and plumbing contractors, when the amount exceeds the sum of \$10,000, must take out a contractor's license, in addition to their license to do a particular business, under Section 155. That Section simply requires that a person who has paid a specific license tax must pay, also, another license tax for each separate business, trade, employment or profession, when a distinct license tax is imposed upon the separate business, etc.

As we have just shown, we think the electrician or plumber, in the instant case, does not enter into a separate business or employment, because the contract he enters into with another exceeds \$10,000.

We therefore advise that, in the particular instances hereinbefore set out, the parties are not liable for this double taxation.

GASOLINE TAX

13 June, 1931.

In your letter of June 11 you state that Subsection 15 of Section 24—Senate Bill 338 (the State road law) enacted at the recent session of the General Assembly—provides refund of gasoline tax, among other purposes, for "manufacturing processes in which such motor fuel is used as an ingredient, solvent or vehicle in the process, on which motor fuel the tax or taxes imposed by this act shall have been paid." Upon this you request an opinion from this office as to whether or not you have authority to refund gasoline tax on gasoline used by persons or companies engaged in the business of cleaning raiment of various kinds.

We think not. The Legislature evidently intended the words "manufacturing processes" to be taken in their ordinary signification. A manufacturing process is one in which and by which articles are produced for use from raw or unprepared materials by giving these materials new forms.

qualities, properties, or combinations, whether by manual labor or machinery. The process of cleaning clothes is certainly not a manufacturing process within this definition.

APPLICATION OF SECTION 157, REVENUE ACT OF 1931, EFFECTIVE MAY 31, 1931

26 June, 1931.

A Process Tax of \$2.00 is imposed in the following:

1. Indictments or criminal proceedings finally disposed of in the Superior Court. The tax is not collectible in any criminal cases in courts below the Superior Court.
2. Civil action in any court of record, to be collected at the time summons is issued or appeal docketed. Only one tax can be collected in any one civil action.
3. On all appeals in civil actions from a justice of the peace to the Superior Court, the tax to be collected when the appeal is docketed.
4. In criminal actions the tax is to be included as a part of the costs against EACH PARTY CONVICTED or adjudged to pay the costs, and the tax of \$2.00 collected from EACH DEFENDANT so convicted or adjudged to pay the costs, when the case is disposed of.
5. In civil actions the plaintiff or appellant must pay the tax when the summons is issued or the appeal docketed. The tax may be recovered as other costs.

Exceptions:

1. The tax is not due in any case where the county is required to pay the costs.
2. The tax is not required to be paid by the State or any of its departments, institutions or agencies.
3. No county, city or town or other municipal corporation shall be required to pay the tax upon institution of any action.
4. The tax is not required in the court of a justice of the peace, but is imposed upon the docketing of an appeal from a justice of the peace to the Superior Court in a civil action.
5. The tax shall not be demanded of any plaintiff or appellant who has been authorized to appeal in forma pauperis.
6. The tax shall not be collected in any action to foreclose a certificate of sale.

Duty of Clerks:

1. To collect the tax.
2. To make reports quarterly, on the FIRST MONDAYS OF APRIL, JULY, OCTOBER and JANUARY, of the tax collected, or which should have been collected, in the preceding three months, and remit the net proceeds to the Commissioner of Revenue.
3. Include the tax in the bill of costs when the costs are recoverable against a defendant, and collect with bill of costs.

Compensation of Clerks of Superior Courts:

1. Five per cent of all amounts collected at institution of suit, docketing of appeal or final disposition of criminal action.

2. Where process tax is recharged against a defendant from whom bill of costs is collected, add and collect five per cent for his own use, whether on salary or not.

TAXATION—VOLUNTARY PAYMENT

29 June, 1931.

You submit to me letter of June 26 from Messrs. J. Elmer Long and Frederick O. Bowman, attorneys of North Carolina Bottlers' Association, relating to tax imposed upon bottlers by Section 134 of the Revenue Act of 1931.

By this section certain taxes were imposed upon manufacturers, producers bottlers and distributors of soft drinks. Through an error in enrolling the act, as ratified, it imposes taxes at one-half the rates as intended and agreed upon as the bill actually passed the Senate and House of Representatives. Following the discovery of this error, the attorneys and officials of the Bottlers' Association had a conference with you and expressed the willingness of the members of the Association to pay the State in accordance with the legislative intent so understood and recognized by them.

This letter of June 26 from Messrs. Long and Bowman summarizes the attitude and suggestions of the North Carolina Bottlers' Association as follows:

First: That the North Carolina Bottlers' Association does not desire to profit by the error found in the 1931 Revenue Act.

Second: That said association desires to carry out in good faith and as far as it can the agreement made with the Joint Finance Committees of the House and Senate to the effect that the 1929 schedule shall be doubled and shall be the tax under the 1931 Revenue Act.

Third: That, if a legal way can be devised whereby you can prepare tax statements, showing the tax due by the bottlers as agreed upon, to wit: double the amount of the 1929 schedule, and will authorize the tax collectors of the State to collect said tax, the North Carolina Bottlers' Association will urge every bottler in North Carolina to pay the tax as contemplated and agreed to.

Fourth: That the association, through its secretary and attorneys, will take this matter up with every individual bottling concern in the State and will urge the payment of the tax in accordance with the above stipulation.

You, as Commissioner of Revenue, have authority to collect only the taxes as imposed by law. You have no right to demand or collect from these, or any other taxpayers, taxes at rates greater than those fixed by the Revenue Act. It would be inappropriate and beyond the scope of the duties of your office for you to send to these taxpayers statements demanding, requesting, or suggesting that they pay taxes at greater rates than those fixed by law, or to authorize your deputies to collect from them taxes at such greater rates.

But the State in its corporate capacity has the right to accept a gift from any one. Its agencies, such as its educational and charitable institutions, constantly receive such gifts, either *inter vivos*, or by way of bequest or legacy in the wills of deceased persons. Such a gift may be accepted by the State in its corporate capacity, through the Governor and Council of State.

It follows, therefore, that these taxpayers, or any of them, may, in addition to paying to you, as Commissioner of Revenue, the taxes required by Section 134 of the Revenue Act, make a gift of an equivalent amount to the State for the benefit of its general fund. Such gift may be accepted by the Governor and Council of State. The funds so received could be used and disposed of as other moneys in the State Treasury.

GASOLINE TAX—RAILROADS—REFUNDS

2 July, 1931.

The receivers of the Seaboard Air Line Railroad have made two inquiries through their attorney, Mr. Murray Allen, regarding the liability of that corporation for the gasoline tax and relating to the rebate of said tax:

(1) Is this gasoline subject to the tax of 6 cents per gallon imposed by Section 24, Sub-section 5, Chapter 145 P. L. 1931?

(2) If the gasoline used by the S. A. L. Company is subject to such tax, is the railway company entitled to the refund thereof, as provided by Section 24, Sub-section 9, Chapter 145 P. L. 1931, upon the ground that the tax constitutes an unlawful burden upon interstate commerce, in conflict with the provisions of the Constitution of the United States?

1. The statement accompanying this inquiry is to the effect that the supply train of the S. A. L., moving from Portsmouth, Va., carries a tank car containing gasoline, which car was placed in the train at Portsmouth. Gasoline from this car was withdrawn at numerous points in North Carolina, delivered to employees and intended for use in this State by road masters, section foremen, bridge gangs, oxwelders and roadway shop foremen, in operating motor cars on the rails of the S. A. L. Company. None of this gasoline will be used on the roads or streets or for other than railroad purposes. The supply train makes about four trips a year, distributing gasoline in this manner.

I am of opinion that, under these circumstances, the gasoline, withdrawn and used in this State, is subject to the 6 cent tax levied by Chapter 145 P. L. 1931, Section 24, Sub-section 5.

2. Probably any tax a railroad company, engaged in interstate commerce, had to pay, would, remotely, be a burden on interstate commerce; but not, I think, in the sense contemplated by Sub-section 9 of the above mentioned Section 24, authorizing the refund of tax "which constitutes an unlawful burden upon interstate commerce, in conflict with the provision of the Constitution of the United States." The burden, if any at all,

is purely incidental and too remote to be considered within the meaning of this statute, or "in conflict with the Constitution of the United States."

I am of opinion that the refund cannot be allowed.

MERCHANTS LICENSE TAX

13 July, 1931.

Request comes from your department for construction of Section 164, Chapter 427, Public Laws of 1931 (the Revenue Act) upon an inquiry from Messrs. Pou & Pou.

The tax is at the graduated scale upon each place of business where the business is carried on. Each such place of business is a separate unit considered by itself in ascertaining the amount of tax to be paid by the merchant. The tax upon each unit is to be assessed and paid on the basis of sales made there, as set out in the tabulated scale in the act.

A retail merchant may have several stores. At one place the sales for a period are not more than \$5,000. For that place of business he pays a tax of \$5. At another place the sales may be more than \$50,000 and not more than \$125,000. For and on account of that place he pays the tax of \$125. The tax for each place can be easily ascertained by determining as a matter of fact into what bracket a particular store or place of business falls. The total of the tax to be paid by the merchant having these several places of business would be determined by adding together the amounts assessable against the several places according to the scale laid down in the statute.

TAXATION—PEDDLERS

23 July, 1931.

I have considered letter to you of July 15 from Mr. Andrew Joyner, Jr., City Attorney of Greensboro, relating to Sections 121 and 121½ of the Revenue Act. These related sections are rather difficult of construction as relating to different situations which may arise.

Subsection (f) of Section 121 exempts those who sell or offer to sell the articles therein enumerated from the taxation imposed by the section. Included in the exemption are vegetables, fruits, products of the dairy or farm produced in this State. Therefore, it is apparent that the peddler's tax imposed in Section 121 cannot be collected from those exempted by Subsection (f).

Section 121½ imposes the flat tax of \$50 on those who carry on the business of selling or offering for sale fresh fish, fresh fruits, and/or vegetables and who do not maintain a permanent business in the State. Subsection (b) then exempts from this tax those who sell or offer for sale the fruits or vegetables grown in the State or the fresh fish taken from the waters of the State.

A portion of the language of Subsection (a) of 121½ would seem to indicate that taxation does not relate to peddling these articles. However, the tax of \$50 is imposed on the basis of each truck operated. Then, too,

it does not apply to those who maintain a permanent place of business in the State. The tax in $121\frac{1}{2}$, then, is on those who do not maintain a permanent place of business in the State, sell fruits and vegetables not grown in the State, or fresh fish not taken from waters of the State, and is at the rate of \$50 for each truck operated by the person so selling such articles.

TAXATION—ICE CREAM

23 July, 1931.

In your letter of July 21, you ask opinion of this office with respect to Section 161 Revenue Act, "Tax on Manufacture of Ice Cream."

The State tax is \$50 for each factory or place where the ice cream is manufactured and/or stored for distribution and an additional tax of one-half cent for each gallon manufactured, sold and/or distributed.

The tax, therefore, is in relation to the place where the ice cream is manufactured and stored for distribution. If the ice cream is manufactured at one place, conveyed and delivered to another, but without being stored at the other, an additional tax could not be imposed on account of any business conducted at the second place.

A town is permitted to levy a license tax not in excess of one-fourth of that levied by the State. This right to so levy such tax is limited to the place and under the circumstances creating liability for the State tax. In other words, the town can only impose the tax following the imposition of it by the State.

I am of opinion that the town cannot impose a tax on the dealer who simply delivers ice cream in such town without manufacturing or storing it there.

What I am here saying, of course, has no relation to the tax imposed by Sub-section (c) of Section 161.

TAXATION—TELEPHONE—FRANCHISE

23 July, 1931.

Your letter of July 21 received. Section 207 Revenue Act, Chapter 427 P. L. 1931, requires a report from a telephone company within thirty days after the first day of January, April, July and October of each year. This report must show the total amount of gross earnings or receipts of the company for the three months ending the last day of the month immediately preceding the date fixed for the return, that is, for the three months ending on the last day of December, March, June and September each year.

Payment of the license or privilege tax of 5 per cent on the gross earnings or receipts of such telephone company is required at the time of making such return. This act was ratified May 27, 1931.

The three months' period for which the first report should be made is that ending June 30. It should be made and the tax paid within thirty days from July 1. Under the Revenue Act of 1931, this privilege tax was raised from $3\frac{1}{2}$ per cent to 5 per cent of gross receipts or earnings. The

new Revenue Act was in force on July 1. Receipts for the three preceding months were simply used as a base for the measurement of the tax due with report required to be made within thirty days after July 1. This could be done, although no tax had been imposed at any period preceding July 1. It is equally clear that it can be done under the new act and the tax collected at the rate of 5 per cent.

I am of opinion, then, that with the return to be made by the telephone company within thirty days after the first day of July, it should pay a franchise privilege tax at the rate of 5 per cent, using its gross receipts or earnings for the three months' period ending June 30 as the base for the measurement of such tax.

GASOLINE REFUND TRACTOR OR STATIONARY GAS ENGINE, USED IN
MANUFACTURING LUMBER

24 August, 1931.

With reference to the demand and protest of Richmond Cedar Works of date August 20, as to gasoline tax refund on Fordsons equipped with flange wheels to run on steel rails, in my opinion, the demand for refund is based upon a misunderstanding of the language employed in Chapter 304, Public Laws 1931, upon which the demand is based.

This chapter amends the Road Law, by inserting a sub-section as follows:

1½. Tractor or stationary gasoline engine used only in the manufacture of lumber.

In my opinion, referring to the method of manufacturing lumber, the words "tractor or stationary gasoline engine" are to be taken together and simply mean "tractor engine" or "stationary engine"; in other words, a reference is made to an engine actually used as a part of the plant and furnishing the power to manufacture lumber. You will note that there is no punctuation after the word "tractor", and I am of opinion that it will not cover any other sort of a tractor used in hauling the raw product to the mill or in hauling the manufactured product away from the mill, whether running on flanged wheels or otherwise.

INCOME TAX—DEDUCTIONS—WHEN ALLOWABLE

9 September, 1931.

I undertake to answer your inquiries in your letter of August 6:

I am of opinion that under Section 322, Subsection 3, of the Revenue Act of 1931, the taxpayer may deduct interest paid on additional taxes found to be due and paid to the Federal Government.

I am also of opinion that the taxpayer is not entitled to exclude from his income tax return interest upon Federal refunds under Section 317, Subsection 2 (d).

These are the conclusions I reach with respect to your inquiries. If any taxpayer desires to be heard, I will be glad to consider any views that may be presented.

DEDUCTIONS OF COMMISSIONS FROM PROCESS TAX; CLERKS SUPERIOR COURT

12 September, 1931.

In my opinion, the clerks of courts other than clerks of the Superior Court have no right to deduct and retain the 5 per cent commission allowed to clerks of the Superior Court on process tax.

GASOLINE TAX—CLAIM FOR REFUND

16 September, 1931.

In this matter, I see no reason to change my ruling of August 24, 1931, which I think fully applies to the application of above named company for refund of taxes on gasoline used in a tractor on a tramway to haul logs to the saw mill for manufacture. As a matter of convenience to you, however, I will amplify the other opinion in some respects, as it applies to this claim and others of like character:

1. This department does not feel justified in holding a statute unconstitutional, except in a clear case. Our rule is to leave the question of constitutionality to be decided by the courts. But the constitutionality of this statute certainly cannot be attacked upon the ground that the law does not confine the tax strictly to gasoline used upon the roads. It proceeds by way of laying the tax upon all gasoline sold, distributed or used in the State; providing, however, for refund of taxes in certain cases. I think it is sound reasoning to say that if there is any unconstitutionality about it, with respect to these refunds, it would only strike down the refund provisions, not the whole law, which would not give the applicant in this matter any relief.

The question of propriety in the enactment of a law is one entirely for the Legislature and with which we have nothing to do. The Legislature might have included a great many other subjects for refund, or it might have omitted these classes to which such refund is now allowed. We cannot go into either the justice or propriety of the law, but must consider it as it is written.

2. The Farmers Manufacturing Company claims a refund of taxes (1) under Section 1½, Chapter 304, Public Laws, 1931; (2) under division 3 of Subsection 15 of the Public Road Law, Chapter 145 P. L. 1931.

Under either proposition, inasmuch as the applicant for the refund must qualify under a provision which is in the nature of an exception, it must do so under a somewhat strict construction of the provisions of the law

permitting the refund. Subsection 1½ of Section 1, Chapter 304, Public Laws 1931, reads as follows:

(1½). Tractor or stationary gasoline engine used only in the manufacture of lumber."

As I have before stated, it is my opinion that the word "tractor," used in this Section, means a tractor engine. It is a term well known and well understood in this business, and a part of the equipment of thousands of small lumber manufacturing plants. Why does the statute use the word "stationary" at all? Why did it not simply say "tractors" or "gasoline engines?" If, on a fair construction, this law includes tractors at all, (not merely tractor engines), it is not necessary to argue that such tractor has flange wheels capable only of running upon a tramway. It obviously would include any kind of a tractor, whether fitted for road service or otherwise; and it would include such a tractor, notwithstanding the fact that it used the public roads because of their convenience in bringing the logs to the mill. Such a tractor hauling logs from a distant location could be said to be "used only in the manufacture of lumber," with as much propriety as a flanged tractor which runs on a tramway in the woods.

That part of Subsection 15, Section 24 of the Road Law, pertinent to this inquiry reads as follows:

(15) Any person, association, firm or corporation who shall buy in quantities of ten gallons or more at any one time any motor fuels as defined in this act for the purpose of, and the same is actually used in the operation of * * * (3) manufacturing processes in which such motor fuel is used as an ingredient, solvent or vehicle in the process, etc.

It is insisted that the gasoline used in these tractors comes under this head, whether as "ingredient," "solvent," or "vehicle," does not appear, but we presume the latter. Gasoline which is used as a motor fuel to run tractors assembling logs certainly could not be called a "vehicle in the process," in the sense used in this act.

We understand "vehicle," as used in the statute, to mean a carrier of some other substance or thing, as, for example, a liquid with which a pigment is applied, including whatever "gum, wax or glutinous or adhesive substance is combined with it." Water is a vehicle used in water color painting, linseed oil is used as a vehicle in oil painting, and there are many instances in which gasoline is used as a vehicle in this sense.

It does not lie with this department to criticize the law, with respect to the presence or absence of discrimination. We suspect that the line could not be very sharply drawn so as to confine the tax to gasoline actually used upon the roads, without opening the door for a great deal of imposition. And the inability to draw such an ideal line may possibly work hardship on users situated like this applicant, which seeks a refund on account of gasoline used in a tractor incapable of road use; but I feel that to hold otherwise than we have in this matter would be virtually to repeal the law.

PROCESS TAX

18 September, 1931.

Chapter 260, Public Laws 1931, Section first, in my opinion, prohibiting the collection of process taxes for the use of the State, against the defendant in any action to foreclose a certificate of sale, contains no reservation which would exempt from its operation process tax in suits started before that date.

Therefore, I am of opinion that a process tax cannot be collected in such suits.

MERCHANTS PRIVILEGE TAX, TOWNS AND CITIES; SECTION 164 R. A.

8 October, 1931.

You submit to us an inquiry made to your department by Mr. Henry A. Whitfield, of Chapel Hill, N. C., with reference to a proposed schedule of license taxes for the town of Carrboro, and referring to the authority of the town to levy a privilege tax on merchants doing business in the town.

While no tax can be levied by a town or city, under Section 164 of the Revenue Act, for the privilege of doing a merchandise business in the town or city, the same being expressly prohibited by division (k) of Subsection (4) of said Section 164, nevertheless, this paragraph does not prohibit the town from "levying a privilege or license tax as permitted under any other Section of the Revenue Act or other statute." No other portion of the Revenue Act is available for a town, but, clearly under Section 2677 of the Consolidated Statutes, the town has a right to levy a tax, in a given instance, as upon a business or trade carried on and enjoyed within the town.

I have not the opportunity just now to look for the charter of Carrboro.

IMPOSITION AND COLLECTION OF PROCESS TAX; TAX FORECLOSURE SUITS

19 October, 1931.

A number of inquiries have reached this office with respect to imposition and collection of the process tax (Section 157 of the Revenue Act) in tax foreclosure suits.

Subsection (a) of that Section provides:

That this tax shall not be levied in cases where the county is required to pay the costs, and in *tax foreclosure suits*.

I am, therefore, of opinion that the tax should not be imposed or collected in any tax foreclosure suits pending or undisposed of at the time of the passage of the Revenue Act, May 27, 1931.

I think it might be well for you to notify all Clerks of the Superior Court of this opinion.

PERMITTED WEIGHT, TRACTOR TRUCK AND SEMI-TRAILER

13 November, 1931.

On Monday, representatives of your Departments and mine held conference with respect to the permitted weight of for-hire trucks for contract

loads. The statute for construction is Section 36 of Chapter 148, Public Laws of 1927, as brought forward in Chapter 235, Public Laws of 1931, which is as follows:

No vehicle shall be operated on any State highway with a combined weight of both vehicle and load exceeding ten tons. No vehicle shall be operated on any State highway the weight of which resting on the surface of such highway exceeds six hundred pounds upon any inch of the tire, roller or other support.

We are dealing here with a tractor truck and semi-trailer, the two not being a physical unit but attached or connected in such way as to be in combination. The tractor truck carries two axles and the semi-trailer only one.

This combination is permitted by the law. For licensing purposes, the Motor Vehicle Bureau of the Department of Revenue treats the truck and the semi-trailer as separate vehicles. Separate licenses are required for each. They must also be treated as separate vehicles for the purpose of applying the quoted statute to them.

It appears that under the laws of some states the two vehicles are treated as a combination for the purpose of determining permitted weight. That is not the case here. Authorities charged with duties in connection with the matter are under the necessity of treating the two vehicles as being separate and distinct in ascertaining the allowed carrying capacity of each.

The difficulty, of course, is in adopting a method of determining with some degree of accuracy the weight which each vehicle is permitted to carry. It has been suggested that the truck and the semi-trailer should be weighed as a unit, allowing to the combination a total weight of twenty tons. Another method suggested is that the permitted load of the tractor truck be ascertained by weighing the front and the middle axles, and that of the semi-trailer by weighing the middle and the rear axles. Both methods would seem to disregard the fact that we are dealing with two vehicles physically attached but not a unit, and seeking to obtain the correct weight of each.

My opinion is that the correct weight should be ascertained by weighing the front and rear wheels of the tractor, with an allowance of ten tons, and weighing the rear wheels of the semi-trailer, with an allowance of ten tons, the weights to be ascertained while the two vehicles are coupled together.

DISCOUNT ON COUNTY TAXES

17 November, 1931.

You present to me this morning letter of November 5 from White Furniture Company with reference to discount on county taxes.

Subsection (8), Section 805, Chapter 428, Public Laws of 1931 (the Machinery Act) provides for a prepayment of taxes from July 1 to October 1 of any year. Necessarily, that Subsection is based upon the idea that during that period it will be impossible for the county or town authorities to say

with exactness what the taxes payable by a particular taxpayer may be. There are several reasons for this; the assessment and equalization of properties may not be completed, the tax books may not be made out, or the exact tax rate may not be known. The Subsection, therefore, contemplates that an estimate may be made of the taxes due and the amount paid credited to the taxpayer. If there should be an overpayment, the taxpayer would be entitled to a return of such amount; if there should be an underpayment, the taxpayer would be required to pay the difference.

This Subsection (8) contemplates allowance of the discount therein provided for during the months named on the taxes *actually* paid. The county or town authorities cannot be chargeable with dereliction of duty because of the physical impossibility of determining the exact amount due during July, August or September. It follows that where there has been an underpayment, the taxpayer would obtain only the discount allowable in the month during which payment of the difference is made by him.

TAX FORECLOSURE SUITS BROUGHT BY INDIVIDUALS; PROCESS TAX

4 December, 1931.

I have just been asked over the telephone by the Clerk of the Superior Court of Franklin County as to whether the process tax under Section 157, Revenue Act of 1931, applies to tax foreclosure suits brought by individuals as well as by a county or city. So far as I recall, this question has not arisen before in any request for opinion from your Department.

A proviso at the end of Section 1, of Chapter 260, Public Laws of 1931, is that "no process tax shall be taxed for the use of the State against the defendant in any action to foreclose a certificate of sale." Again, in Section 157 (a) of the Revenue Act of 1931 it is provided that the tax shall not be levied "in tax foreclosure suits."

I am of opinion that these provisions apply to such tax foreclosure suits brought on certificates of sale by individuals as well as by counties or towns. I have so advised the Clerk of the Superior Court of Franklin County.

INCOME TAX—FEDERAL RESERVE BANKS

22 December, 1931.

By referring to United States Compiled Statutes, Section 9791 (3), you will find the following:

Exemption from Taxation. Federal Reserve Banks, including the capital stock and surplus therein, and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate.

From this, it appears that the dividend on the capital stock of the Federal Reserve Bank of Richmond, Va., is not subject to income tax in this State.

However, as to refunding tax heretofore paid, that raises quite a different question, which we will try to meet when presented.

BAKERIES—PERSONS DELIVERING BAKERY PRODUCTS

5 January 1932

I am in receipt of your letter of December 31, accompanied by letter of December 24 from Mr. Paul L. Raper, City Clerk, Lexington, relating to tax on bakeries, persons, firms or corporations delivering bakery products.

As you state in your letter, there is no specific State license tax on bakeries and no Section of the Revenue Act governing the amount of license tax a city may levy on such business. Section 121 of the Revenue Act of 1931 (Chapter 427) deals with tax on peddlers. Peddling has a specific meaning. As defined in that Section, it is a carrying of goods, wares and merchandise from place to place, offering to sell or barter the same or actually selling or bartering the same, to other than merchants, dealers or those regularly engaged in the mercantile business. Section 121f excepts from this peddler's tax the sale of certain articles by the peddling method. Among those so excepted are fuel, fish, beef, bread, cakes, pies, etc. The exception as so contained in Section 121f relates to the sale of such articles by the peddling process or method. This Section 121, then, does not except the sale of such articles from other privilege or license taxes when such sale is carried on or conducted by other than the peddling method or process.

Of course, taxation by a city or town of the sale of such articles by some other method would be subject to the general State law as found in the Chapter on Municipal Corporations or in the charter of the particular city or town.

STATE CANNOT IMPOSE INHERITANCE TAX UPON TRANSFER OF SHARES OF STOCK OF CORPORATION WHERE DECEDENT AT TIME OF DEATH LIVED IN ANOTHER STATE.

1 February, 1932.

On August 16, 1930, Mrs. Ashlyn L. Cannon, Executrix of the estate of J. Ross Cannon, paid to your Department an inheritance tax of \$9,183.95. At the time of the death of the decedent, he was a legal citizen and resident of the State of South Carolina. The tax was paid under protest and so stated in the letter accompanying the payment from the attorney of the said executrix, August 16, 1930, the estate denying the legality on the ground that it was not liable for such inheritance tax. On August 18, 1930, your Department acknowledged receipt of the check and the fact that it was paid under protest. On September 13, 1930, formal demand was made by this estate through Mr. W. G. Finley, its attorney, of York, S. C., for return of the inheritance tax so assessed and paid. Acknowledgment was made by your Department September 15, 1930.

I understand that a portion of this tax which the estate is now demanding the return of is the \$8,972.56 imposed and paid on account of stocks in North Carolina corporations owned by the decedent at the time of his death. Under our statute such stocks are liable for inheritance tax.

In *First National Bank of Boston v. State of Maine*, decided January 4, 1932, the Supreme Court of the United States held that a State could not

impose such inheritance tax upon the transfer of such shares of stock of a corporation where the decedent lived at the time of his death in another State. I therefore, advise that under this decision of the Court it will be necessary to return this tax so paid to this estate.

FRANCHISE TAXES ON ORDINARY BUSINESS CORPORATIONS; INTERPRETATION OF
SECTIONS 210-211; "BORROWED CAPITAL"

25 February, 1932.

Judge L. R. Varser at Lumberton has held several conferences with me with respect to proper interpretation of certain provisions of Sections 210 and 211 of the Revenue Act relating to franchise taxes on ordinary business corporations. I have also conferred with Mr. Terry of your Department on the subject.

It is most difficult to reach a correct conclusion in all instances with respect to the term "borrowed capital" as used in these Sections. However, I advise as follows, as establishing certain guiding principles:

(1) That debts represented by encumbrances of property, which debts were on the property at the time of purchase thereof by a corporation, but are not assumed by such purchasing corporation, should not be included as such "borrowed capital" in assessing franchise taxes under said Sections 210 and 211.

(2) That the expression in said Sections, "which in no case shall be less than the assessed value of all the property of such corporation in this State for the year in which report and statement is made," necessarily means the assessed value for taxation of such property so owned by the corporation. It will be noticed, of course, that this is a minimum basis for the imposition of the franchise tax and is to be used only in case such a value is greater than the amount which would otherwise be determined for the measurement of the tax as set out in said Sections.

(3) That "borrowed capital" includes all bond issues of the corporation. Of course, an ascertainment of facts may result in reaching the conclusion that the term, "borrowed capital," is more extensive than simply bond issues of the corporation. However, it would seem, as a general proposition, that certainly it does include such bond issues.

Necessarily, we are feeling our way in the application of this new term in the Revenue Act with respect to franchise taxes. Therefore, I frankly say that it may be found necessary to make some modification of what I have here said under (3), though it is not likely that such will be the case. However, I am quite certain that (1) and (2) represent correct conclusions.

TAXATION—WHEN INCREASES OPERATIVE

21 March, 1932.

Subsection (3) of Section 208 of the Revenue Act levies a tax on insurance companies collecting premiums for liability under the Workmen's Com-

pensation Act of 4 per cent on all such liability insurance, and applies a corresponding rate of tax to self insurers, which is an increase of $1\frac{1}{2}$ per cent over such taxes levied by the Revenue Act of 1929.

Section 508 of the Revenue Act provides: "*When Increases Operative.* In all instances in which the taxes are increased or decreased under Schedules B and C of this Act, and which shall become due between the ratification of this Act and the first day of June, one thousand nine hundred and thirty-one, such increase or decrease shall become operative only from and after the thirty-first day of May, one thousand nine hundred and thirty-one."

This Section is one of limitations and, by its operation, any increase of taxes applicable to the subjects which it covers are limited to the period from the 31st day of May to the 1st day of June, 1931, but this section only covers taxes which become due between the ratification of the act, (which was the 27th day of May, 1931), and the 1st day of June. Whatever may have been the particular object of the Act, it does not cover the tax levied under Section 208, Subsection (3), for the reason that such taxes do not become due within the designated period, but become due only upon the making of the reports which are required to be made within thirty days after the 1st day of July—certainly, then, not before the 1st day of July. In construing Section 208 of the Revenue Act, we must, therefore, ignore Section 508 altogether, as it has nothing to do with the matter.

Under Section 208, Subsection (3), the insurance companies are required to make their reports within the first thirty days after January and July of each year, and self insurers make a report on the same day; this report is of the total gross premium receipts derived from residents of the State, or on property located therein during the preceding six months of the *previous calendar year*. Upon this, the tax was levied at the statutory rate of 4 per cent.

It makes no difference in the construction of this statute whether we regard the tax as being laid on business already done, or whether it is prospective in its character, using the total amount of the premiums collected during the preceding six months of the preceding calendar year as a basis of measurement; under either construction, the State had the right to fix and levy the rate of interest at 4 per cent, as is done in this statute, and the Act is not invalid as being retroactive.

However, by the terms of the statute, it is a privilege tax for engaging in the business within the State, and, therefore, prospective in its character by the terms of this Section, and also, by Section 100, both of which declare it to be such a privilege tax.

My conclusion is that both insurance companies, furnishing liability insurance under the Workmen's Compensation Act, and the self insurers are liable for the tax of 4 per cent upon the entire six months' period covered in their reports; and neither the insurance company or the self insurers is entitled to have the period split up into a period of five months and one month by reason of Section 508. Obviously, the dates referred to in this Section exclude any such process, as the tax is measured by the business of the next preceding six months of the preceding calendar year. A precisely similar situation arose with respect to the tax on telephone companies,

under Section 207 of the Revenue Act, and in that matter, the Attorney General arrived at the same conclusion. See letter to Honorable A. J. Maxwell, Commissioner of Revenue, July 23, 1931.

TAXATION—MOTOR VEHICLES

2 April, 1932.

Following our recent conference on the subject, I submit the following as summary of conclusions I have reached with respect to principle which should govern in taxation of motor vehicles under our statutes:

1. Motor vehicles licensed in another State and operated by the owner thereof, or his agent, and not operated for hire, may be extended such reciprocity in this State as the State Highway Commission may determine under authority of Chapter 300, Public Laws, 1931.

2. Motor vehicles operated for hire, and engaged exclusively in interstate commerce, may be charged as compensation for the special facilities furnished by this State, in the way of highways and their necessary police regulations, the license tag fees provided in Chapter 336, Public Laws, 1931.

3. Motor vehicles used exclusively in interstate commerce, whether for the transportation of passengers or freight, should not be charged the "for hire" license provided in Section 165 of the Revenue Act.

4. Motor vehicles that engage to any extent in transportation for hire of either passengers or freight, where the points of origin and destination are both within the State, are liable for the taxes prescribed in Section 165 of the Revenue Act, notwithstanding that a part, and even the major part, of the business transacted by such vehicles is interstate.

TAXATION—WORLD WAR VETERANS

24 May, 1932.

You refer to me letter of State Revenue Commission of Georgia, regarding the exemption from taxation of land purchased with money received from the government by a veteran in compensation for injuries or service. The letter calls attention to the fact that the Supreme Court of Georgia has held such land not subject to taxation. Reference in the letter is made to the decisions of the North Carolina Supreme Court holding the reverse.

The decisions of the North Carolina Supreme Court, on this question, are *Martin v. Guilford County*, 201 N. C., 63 and *Lambert v. Guilford County*, 201 N. C., 67. The main opinion is written in the Martin case, and has special reference to Title 38, U. S. C. A., Section 454, June 1924, Chapter 320, Section 322, 43 Stat. 613, the act of Congress which purported to exempt from taxation of Federal, State and county the compensation given to a World War Veteran. The North Carolina Supreme Court held that land purchased with such compensation money is not immune from State, county and municipal taxes. The reasoning in this case fully covers the situation referred to in the letter.

MERCHANTS LICENSE TAX—PENALTY

20 June, 1932.

Section 164 of the Revenue Act imposes a license tax upon merchants for the privilege of "opening, establishing, operating, and/or maintaining any store, stores, mercantile establishments, place or places of business, for the purpose of selling goods, wares or merchandise at wholesale or retail in this State." This privilege tax is measured by the gross sales, according to the schedule set out in Subsection (e). The taxpayer is required, under Subsection (f), to make a report of sales within the first ten days of the months of June and December. Under Subsection (g), the taxes imposed by this Section are payable on or before December 10, and on or before June 10—that is, one-half yearly, and the license issued is for carrying on the business for the next successive six months. Under Subsection (h), the license taxes imposed by the Section are declared to be of the same nature as those imposed by the Article of the Revenue Act in which the Section is set.

Subsection (i), places a penalty upon the taxpayer who fails to make the report required by the Section, or fails to make remittance of the amount of tax due and payable, or who shall make a false report; this penalty is "equal to the necessary expense of traveling and per diem of a representative of the State Department of Revenue, who shall be assigned to investigate such violation and to secure a correct report of sales and settlement of tax." In addition to this, the person, firm or corporation violating the law is guilty of a misdemeanor.

Section 187 applies to this Article, (Article 2nd) generally. Subsection (b) provides that "if any person, firm or corporation shall continue the business, trade, employment or profession, or to do the act after the expiration of the license previously issued, without obtaining a new license," he or it shall be guilty of a misdemeanor, etc. And, further: "If such failure to apply for and obtain a new license be continued, such person, firm or corporation shall pay an additional tax of five per centum of the amount of the State license tax, which was due and payable on the first of June of the current year, in addition to the State license tax imposed by this Article for each and every thirty days that such State license tax remains unpaid from the date that the same was due and payable."

While you will find a slight discrepancy between Section 187, Subsection (b) and Section 164, Subsection (g), relating to the time the taxes are due, it is evident to my mind that section 187 was intended to apply to the merchants license tax as much as to any other privilege tax in the Article, of which the Section is a part, and I think Section 187 sufficiently clear that it may be applied to the merchants license tax, because the penalty is to run from the date that same was due and payable.

I think it is clear that in Section 164, Subsection (i), the penalty directly imposed upon the merchant who fails to make the report and remit the tax, is for the purpose of defraying expenses of investigation. It is applied to a single act or omission—that is, failure to report or make remittance. There would be no remedy in this instance for the continued failure to pay, upon

which theory penalties for delay are usually imposed. Section 187, Subsection (b), however, does contain a penalty based upon that theory alone, and, in my opinion, both Sections are applicable to the merchants privilege tax, and either or both may be imposed when the circumstances justify it.

TAXATION—BONDS AND/OR INTEREST COUPONS; COUNTY OR MUNICIPALITY ACCEPTING IN PAYMENT OF TAXES

24 December, 1931.

You submit to this office inquiry received by yours, asking whether a county or municipality may accept, or be forced to accept, the bonds and/or interest coupons of such bonds in payment of taxes.

Answer: No, unless the bonds and/or interest coupons upon their face and the statute authorizing their issuance require or permit this to be done. Parenthetically, I may say that I know of no bonds issued by any county or municipality in the State upon authority requiring or permitting acceptance of such bonds and/or interest coupons in payment of taxes to the issuing political subdivision. If any should be found upon which the claim is made that they contain such authority, I would, of course, want to examine the bonds and/or interest coupons, and the statutes authorizing them, before passing upon the particular case.

There are many reasons why such bonds and/or interest coupons may not be used in the payment of taxes to a county or municipality. If this could be done, it would be a method whereby the holder could secure a preference in its claim as against such town or municipality.

Taxes are raised for various purposes—support of schools, construction and maintenance of highways and streets, debt service, conduct of courts, and all the other purely governmental functions to be performed by and within a tax levying jurisdiction. These are vital purposes of government itself. There are different rates for the different objects. Each taxpayer pays for the support of the different objects in the proportions as set out in the different tax rates. To permit the acceptance of the bonds and/or interest coupons of the county or municipality in payment of these taxes might paralyze the whole operations of the governmental service. Certainly, in the absence of direct and positive authorization, the use of such bonds and/or interest coupons for such purposes would be contrary to public policy. Other questions might arise should there be assumed legislative authority for such action.

TAXATION JOINT STOCK LAND BANKS

23 March, 1932.

Your letter upon above subject has been held in abeyance, but we have received request now to answer the same.

In your letter (of January 16), you ask a number of questions, categorically, and which, I think, can be more conveniently answered without reference to the formal divisions of the subject in your inquiry.

The taxation of Joint Stock Land Banks, operating under the Federal law, is governed by Chapter 245, Act of July 17, 1916, Section 26, Stat. 380. See U. S. C. A., Title 12, Section 931: "Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of Section 761 and Section 781 of this Chapter. First mortgages executed to Federal land banks, or to joint-stock land banks, and farm loan bonds issued under the provisions of this Chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation."

Therefore, such Joint Stock Land Banks are not subject to the State income tax. That being true, it becomes necessary to answer the question as to how such tax might be assessed.

While our Revenue Act provides the method by which there may be a revision of income tax, Sections 340 and 341 (R and A), I do not think that any bank which has paid an income tax voluntarily, and not under protest, could recover the same back out of the State; because such a proceeding would not be in the nature of revision and appeal at all, but would be to recover back the tax, all of which, it would be contended, was contrary to law.

By the terms of the above cited statute, it will be seen that the only property tax for which the Joint Stock Land Banks are liable is a property tax on real estate held, purchased or taken under the provisions of Section 781 of Chapter 245, aforesaid. Under Section 781, such bank may acquire and dispose of—(a) "Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part, leased to others for revenue purposes. (b) Parcels of land acquired in satisfaction of debts, or purchased at sales under judgments, decrees and mortgages held by it." While this real estate is subject to State tax, I do not know whether or not such tax has been regularly assessed or what procedure has been pursued with reference thereto. If the taxes have not been collected upon such real property, in my judgment, the State could go back at least three years and collect the same.

Some of the questions asked in the letter are hypothetical, and I think the foregoing answers them all.

MARBLE YARDS—LOCATED BUSINESS—NON-RESIDENTS

29 August, 1931.

This office is in receipt of your letter of August 26 in relation to construction of Section 160, "Marble Yards," of the Revenue Act of 1931.

The Revenue Department has interpreted this Section as imposing the single tax on the place where the business is carried on—that is regarding it as a located business. This means that where one having a marble yard in one city in North Carolina, at which place he manufactures his product,

and erects the monuments at that city and in various other towns and cities in the State, he would be liable to the tax only in the town where he carries on his located business—that is, at the place of manufacture. It follows, then, that if the person to whom you refer has a located place of business in another town in North Carolina where he manufactures his monuments, he would not be liable for this additional tax simply because he erects some of them in Raleigh.

Of course, a non-resident of the State, without a located place of business here where he manufactures his product, would be liable to the tax at his located place of business in the State.

OPINIONS TO STATE HIGHWAY COMMISSION

MOTOR VEHICLES IN INTERSTATE COMMERCE; PROHIBITED WIDTH

10 February, 1931.

Senator H. S. Ward of Beaufort, in a letter to you dated February 6, requests you to take the opinion of the Attorney General as to whether or not a bus or truck engaged in interstate commerce can be prohibited from using the highways of North Carolina, when it has a total outside width of 96 inches, notwithstanding the provisions of Section 34 of Chapter 148 Public Laws 1927. That Section, so far as material to the discussion, is as follows:

No vehicle shall exceed a total outside width, including any load thereon, of ninety inches, except that the limitations as to the size of vehicles stated in this Section shall not apply to implements of husbandry temporarily propelled or moved upon the public highways."

It is said, though we have not the means of verifying the truth of that statement, that there are only two states in the Union which do not permit motor vehicles of an outside width of 96 inches and those states are North Carolina and Florida. Quite a number, both of trucks and busses, are using the highways of North Carolina though they exceed the ninety inches of the statute in hauling loads of passengers in interstate commerce through the State or into the State and with an immediate return to the State of their residence.

Section 18 of Chapter 122 Public Laws 1927, as amended in 1929, deals with registration by non-residents. The general effect of Section 18 may be stated as follows:

It divides foreign motor vehicles into three classes to determine whether they shall be required to carry a local license plate:

1. Non-resident motor vehicles not required to be registered if the State from which they come grants the same privilege to motor vehicles from this State.
2. Motor vehicles coming from a State which has not this reciprocal provision must be registered and license obtained for them within sixty days from the time of entering the State.
3. Non-residents carrying on business within this State and regularly operating in such business motor vehicles are required to register such vehicles and pay the same fees therefor as is required with reference to like vehicles owned by residents of this State.

There is, in Section 18, a qualification to number one to this effect:

"That the owners of the foreign motor vehicle have complied with the provisions of the law of the State of their residence, relative to the registration and equipment of their motor vehicles.

Your department has construed the word "equipment" as including the width of the particular motor vehicle. Senator Ward denies that the term

"equipment" is broad enough to describe a motor vehicle wider than our statute provides.

We think the Senator is mistaken. The term "equipment" means the provision of whatever is needed for efficient action or service. A motor vehicle is equipped with a sixty horse power engine. It is equipped with a body 9.6 feet wide. Unless this meaning is given to the term "equipment," as contained in the statute, then it means nothing at all in that connection.

There is another aspect of the question that should be presented. These motor vehicles wider than allowed by our statute are operated in interstate commerce. The United States Supreme Court has never dealt directly with the question as to whether or not a state could prohibit the operation of a motor vehicle within its limits in interstate commerce, when its dimensions are greater than those allowed domestic motor vehicles and when those dimensions are not such as to constitute the vehicles a positive obstruction of the highways or a menace to others using the highways.

The United States Supreme Court has sustained regulations of states, though applied to foreign cars engaged in interstate commerce. In *Hendricks vs. Maryland*, 235 U. S., 610, it was said:

"In the absence of national legislation covering the subject, the state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation on its highways of all motor vehicles, those moving in interstate commerce as well as others."

In *Cane vs. New Jersey*, 242 U. S., 160, it is said:

"The power of a state to regulate the use of motor vehicles on its highways has been recently construed by this court and broadly sustained. It extends to non-residents as well as to residents. It includes the right to exact reasonable compensation for special facilities afforded as well as reasonable provisions to secure safety, and it is properly exercised in imposing a license fee graduated according to the horse power of the engines."

The court has since applied these principles to various kinds of regulation in *Interstate Bus Corporation vs. Holyoke Railway Co.*, 273 U. S., 45; *Clark vs. Poor*, 274 U. S. 554; *Carley vs. Snook*, 281 U. S. 66; *Interstate Bus Corporation vs. Blodgett*, 276 U. S., 245.

In the latter case the court stated: "But we need not consider whether the principle relied on goes so far as to prevent a state from excluding from its highways a motor carrier which refuses to pay a charge for their use."

This shows, of course, that the right to exclude from the highways of the state foreign busses or trucks of the description hereinbefore given is still undetermined. This being true, we, of course, would not undertake to determine the question in advance.

Unless there is careful co-operation among the states in the operation of busses and trucks in interstate commerce, so as to prevent unreasonable interference with commerce, Congress will step in by an act, which will supersede all state regulations and impose that duty upon a commission

established by the Federal Government, with all the inconveniences that would ensue to the state from the carrying into effect of such programme.

We think, therefore, that your dealing with these large trucks and busses has been justified by the situation.

MOTOR VEHICLES; TRAILERS

4 June, 1931.

The recent General Assembly enacted into law House Bill No. 247. That, in part, amends and re-enacts sections 34, 36, 38 and 41 of chapter 148 Public Laws 1927, the act of 1927 known as a uniform act regulating the operation of vehicles on highways.

The question propounded by you relates wholly to the effect of the change of section 41 as to whether or not the new section 41 permits a motor vehicle with a semi-trailer to draw, in addition thereto, another vehicle or trailer.

We think this question should be answered in the negative. Sub-section (a) of section 41 of the old act was re-written. That sub-section is as follows:

"No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one other vehicle."

The old sub-section (a) creates an exception as follows:

"Except that a motor vehicle with a semi-trailer may draw, in addition thereto, one other vehicle.

The new sub-section (a) of section 41 is as follows:

"No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one trailer or semi-trailer."

The effect of this is, of course, to eliminate the exception from the act and forbid any motor vehicle to be driven upon any highway having attached thereto more than one trailer or having attached thereto more than one semi-trailer. The very fact that the exception is stricken out, it seems to us, is a declaration by the Legislature that the motor vehicle shall not have attached thereto a semi-trailer and also a trailer. It may have either, but only one of them.

This particular part of the act is in force and effect from and after April 2, 1931, when it was ratified. The other provisions of the act which do not become effective at that date, have stated in them expressly the date from which they shall become effective.

UNAUTHORIZED PRACTICE OF LAW; CHAPTER 157, P. L. 1931, UNLICENSED REPRESENTATIVE OF HIGHWAY COMMISSION APPEARING BEFORE INDUSTRIAL COMMISSION

16 September, 1931

Referring to your letter of the 15th as to whether or not a representative of the Highway Commission, who is not a licensed lawyer, may appear be-

fore a member of the Industrial Commission and represent the Highway Commission without violation of Chapter 157, Public Laws 1931, relating to unauthorized practice of law, I will say that much depends upon the character of the appearance and representation.

I think that when a member of the Industrial Commission is sitting for the hearing of a matter within the jurisdiction of the Industrial Commission, an appearance before him in such matter would be an appearance before the Board, inasmuch as he hears matters subject to appeal to the full Board. I cannot get the consent of my mind to hold that the State, either by reason of its sovereignty, or a corporation, by reason if its right, if such exists, to appear in *propria persona*, could lawfully have a representative who is not a licensed lawyer to appear before the body and perform all the functions of a lawyer, and not be in violation of the law. It seems to me that it was the intention of the act, in part, to prevent that very thing.

I realize the inconvenience that it may give the department, but I am of opinion that it cannot have hearings on matters in which it is interested formally conducted by any other than a licensed attorney before the bodies mentioned in the act.

EMPLOYEES OF HIGHWAY COMMISSION, PRISON DIVISION; AUTHORITY OF DIRECTOR OF PERSONNEL TO MAKE RULES AND REGULATIONS; NONE GIVEN

22 March 1932.

Under date of March 15 you submit to me copy of "Rules regulating the employment of certain employees of the Highway Commission in the Prison Division—effective April 1, 1932," recently promulgated and sent to you by the Director of Personnel. You ask my opinion as to whether the Director of Personnel has power and authority under Chapter 277, Public Laws of 1931, to establish such rules for the State Highway Commission and require conformance to them.

In am of opinion that the Director of Personnel does not have such power and authority.

The rights, duties and powers of the Highway Commission with respect to employment of subordinates were contained in the original Highway Commission Act of 1921. By Chapter 145, Public Laws of 1931, C. S. 3846.f was amended and rewritten. Among other things, it provided that the State Highway Commission created by that act should "succeed to all the rights, powers, duties and obligations of the existing Highway Commission." The concluding sentence in section 28 of the Highway Act of 1931 is:

All necessary directors, physicians, guards or supervisors, or any other necessary employees for the proper care, keep and handling of such prisoners, shall be employed by the State Highway Commission by and with the consent and approval of the Governor, and serve at the pleasure of the State Highway Commission.

There is nothing in Chapter 277, Public Laws of 1931, creating the office of Director of Personnel, which divests the State Highway Commission of

the powers specifically conferred upon it by the acts referred to, or which confers upon the Director of Personnel the power or authority to establish or promulgate rules and regulations of the nature submitted to me with your letter of March 15.

OPINIONS TO STATE BOARD OF HEALTH

PART TIME HEALTH OFFICERS—RECEIVING AID

8 June 1931.

In your letter of June 4, 1931, you request of this office an interpretation of the last clause of section 22½ of the Appropriation Act of 1931. That clause is as follows:

That counties desiring part time health officers shall be entitled to receive the same aid in proportion to the county expenses for county health work as counties having a whole time health officer.

This provision of the act provides, in general terms, the method by which the funds provided in the act are to be administered in their relation to counties having a part time health officer. It is a proper and natural interpretation, allowing some play of discretion to the State Board of Health:

- 1st. In determining what is the same aid; and
- 2nd. Whether that aid is in proportion to the county expenses of the particular county.

We do not interpret the act as meaning necessarily an arithmetical proportion, though that would be one of the elements in the proposition. Conditions may be different in particular counties, under such a broad and general classification. All we can suggest here is that this allocation of funds should be fixed after taking into consideration all the circumstances of the particular case, always keeping in mind that the particular counties described must be dealt with so far as aid is concerned, in the same general way that other counties having whole time health officers are to be dealt with.

To this extent only has the State Board of Health any discretion in the matter.

ATTACHING TAGS TO BEDDING

28 September 1931.

In answer to your inquiry of September 26, based upon the request of The Rome Company, Baltimore, Maryland, to be permitted to fasten tags to bedding with a clip arrangement, and as to whether or not this would be permitted under the Sanitary Bedding Law of 1923, I will say that I thoroughly approve of your letter of September 11, 1931 to that company, to the effect that the tags must be attached strictly in accordance with the statute.

It is evident that this act contemplates a more secure fastening of the tag to the bedding, and, also, I think the question probably arose in the minds of those who drew and passed the bill as to the most permanent form of fastening the tag and this is reflected in the act. I think it must be sewed to the bedding, as required in the statute.

PRACTICE OF NATUROPATHY

4 February 1932.

Inquiry has been made with regard to the status of practitioners of Naturopathy. Such practitioners come under the provisions of C. S. 6704, and generally under the provisions of Article 5th, Chapter 110, Consolidated Statutes, relating to medicine and allied occupations. By C. S. 6704, Naturopathists, with "other non-drug giving practitioners, are licensed by the Board of Osteopathy." Section 6708 provides that any "non-drug giving practitioner who practices without compliance with the provisions of these laws shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$25.00 nor more than \$100.00 for each offence or imprisonment not less than three months nor more than six months in the county jail."

OPINIONS TO DIRECTOR OF LOCAL GOVERNMENT

FEES COLLECTED BY SALARIED OFFICERS; ALAMANCE COUNTY

9 July 1930.

You call my attention to Chapter 617, Public Local Laws of 1911, relating to salaries of certain officers of Alamance County. This act directs these several officers to collect all the fees, commissions, profits and emoluments belonging or appertaining to the offices, faithfully account for the same, and pay them into the county treasury. The salaries set out in the act are to be paid to the several officers by the county treasurer at the times and in the amounts designated.

You inquire whether the fees so received and collected by these officers and paid into the county treasury belong to the general fund of said county, or otherwise. I am of opinion that they belong to the general fund of the county.

COUNTY SUPERVISOR OF TAXES; WHEN AUDITOR NEED NOT BE FREEHOLDER

23 December 1930.

Your letter of December 22 received. I quote from letter heretofore written by the Department on the same general subject:

We agree with you that when the county commissioners impose the duty of county supervisor of taxes upon the auditor, etc., it would not be necessary for that particular officer to be a freeholder in the county, as it seems that that qualification is required only of a county supervisor of taxes, appointed at large.

DEPOSITORY SECURITY; DISCRETION OF COMMISSION

17 March 1931

In your letter of March 13, you inquire whether or not the local government commission has any discretion with respect to enforcing the provisions of the act, section 32 to deposit funds of units in a local depository and adequately secured by the bond or deposit required by said section 32.

Section 32 contains no provisions similar to that of section 30, relating to sinking funds. The thirty days' time there has no application to section 32. The latter section requires security for the unit's deposit. If no bank or trust company can be found in the county which is able to safeguard the funds, the officer having the custody of the funds may deposit the same in any bank or trust company, organized under the laws of the United States or of any state which is able and willing to give such security. (Section 34.)

Section 33 provides for a report to the commission by the officers having the custody of the funds of any unit on the first days of January and July of each year and at other times upon the direction of the commission or director.

We suppose that one of the first duties of the commission or the director, as the commission may determine, will be to secure these reports at once, in order that they may determine whether the law has been complied with by the particular unit involved. This, of course, would take some time. If, however, the commission has information otherwise of the insecurity of the funds of a particular unit, the director may communicate with that unit at once and see that such funds are adequately secured. The time for performing these duties would be largely fixed then, by the Local Government Commission. There is no statutory time given.

CHIEF CLERK TREASURER'S OFFICE; AUTHORITY OF

28 April 1931

You request of this office a statement of the authority of the Chief Clerk in the State Treasurer's office to act for the State Treasurer during his necessary absence from the office.

The general rule is that a public officer may deputize a clerk in his office to do for him and in his behalf, all those things which is incumbent for the officer to do under the statutes or general law, except those that involve the exercise of discretion in the sense that they are judicial in their character. The mere administrative functions, then, of a public officer, speaking generally, may be exercised by his deputy or agent in the conduct of the office. There must, however, even in the performance of these administrative duties, be conferred upon the clerk, so deputized, express authority to act in the matters involved.

So far as the Treasurer's office is concerned, there is express statutory authority given the Treasurer to impose certain duties upon his clerk as follows:

C. S. 7690. MAY AUTHORIZE CHIEF CLERK TO ACT FOR HIM; TREASURER LIABLE. The Treasurer may authorize his Chief Clerk to perform any duties pertaining to the office, except signing checks; but the Treasurer is responsible for the conduct of all his clerks.

The only case in which our Supreme Court has dealt with this section of the Consolidated Statutes, is *Jackson v. Martin*, 136 N. C., 196, which is not material upon the point discussed in this opinion.

It is admitted that the words used in this section, defining the exception to the deputation of the deputies of the office to the Chief Clerk—"except signing checks"—might be made more definite. We think, however, that what the General Assembly meant by incorporating this exception in the act was that the Chief Clerk could have no authority to draw checks, which in their essential nature were orders to pay a particular drawee out of the funds of the State itself. The reason for this exception may be found in the principle established by the decisions of our Supreme Court—that the

Treasurer, in drawing a State warrant or check, must ascertain that the check or warrant was legally drawn and that an appropriation made by the General Assembly was available to pay the particular warrant. This function being essentially judicial, could not be delegated by him.

Bank v. Worth, 117 N. C.—146.

Garner v. Worth, 122 N. C.—250.

If, then, we apply this principle to the problems presented by you in your communications of April 28, they do not seem so difficult. All these problems arise out of the enactment of the recent Local Government Act and of the duties imposed upon the State Treasurer by that act. It is observable, in the first place, that all of these duties are essentially clerical—that, so far as endorsing a check payable to the State Treasurer is concerned he is a simple conduit to pass the draft on to those entitled to its proceeds.

Your questions are stated in your letter thus:

Q. May the Chief Clerk of the Treasurer's office sign a draft on the purchaser of bonds and notes, when such draft is payable to the order of the State Treasury.

A. Yes.

Q. May the Chief Clerk in the State Treasurer's office endorse a cashier's check payable to the State Treasurer; such check being deposited by the purchaser of bonds or notes to secure his bid at the sale and to be attached to the draft in question one, above, for the proceeds of the sale?

A. Yes.

Q. May the Chief Clerk in the State Treasurer's office sign a letter of instruction to a local bank, relative to the draft and check in questions one and two above, and in such letter instruct such bank to forward certain bonds to New York attorneys for legal opinion and these attorneys in turn to forward these bonds to the correspondent bank to be delivered upon payment of the draft?

A. Yes.

Q. May the Chief Clerk in the State Treasurer's office sign a treasurer's receipt for the proceeds of bonds or notes; such receipt to be delivered with a draft in question one above, to the purchaser upon payment at the correspondent bank of the draft in full?

A. Yes.

Q. The bond attorneys, who are to pass upon a certain issue of bonds, have requested that they be furnished a statement from the State Treasurer regarding his application of the proceeds from the sale of the bond issue. In instances of funding bonds, the attorneys request that the State Treasurer certify that he shall remit the proceeds from the sale at such places where outstanding obligations of the local unit are payable. Do you think the Chief Clerk in the State Treasurer's office may sign this statement for the Treasurer.

A. Yes.

Q. A town recently sold \$87,500 of bonds to fund outstanding, floating indebtedness. The bonds were sold to a firm in Toledo, Ohio, and are ready for shipment. The procedure will be to forward through a local bank, a draft upon the purchaser and, in accordance with the wishes of the town officers, the draft will be made payable to the order of the Central Hanover Bank & Trust Company of New York City, to be credited to the account of the town. Notes maturing within the next few days will be presented to that bank and trust company for payment. Can the State Treasurer sign this draft through his Chief Clerk?

A. Yes.

In each of them, we have substituted "Chief Clerk of the Treasurer's office," for that is the statutory term that describes Major Moody. To each of these questions, then, we answer "Yes," and that answer is appended to each of them.

It must be understood that the Chief Clerk, throughout the whole procedure, is acting for, and in behalf of, the State Treasurer upon express written authority. It must be further understood that there are certain duties imposed upon the State Treasurer, as a member of the Commission, which are in their nature judicial and so, cannot be delegated to the Chief Clerk. It must be further understood that each batch of papers, in which the Chief Clerk purports to act as aforesaid for the State Treasurer must be accompanied by a properly certified and identified copy of his authority so to act.

INVESTMENT SINKING FUNDS

29 April 1931

In your letter of April 27, you state that you have a case where there was an agreement by the Board of County Commissioners to make a loan of part of the sinking fund on real estate, several months before the act went into effect. The money, however, was not available at that time, but the mortgage was prepared, executed and delivered to the trustees, with the understanding that the money was to be turned over to the borrower as soon as the interest was collected from other loans. This money was not delivered to the borrower before the effective date of the recent Local Government Act. You inquire whether the money can now be delivered to the borrower, notwithstanding the provisions of section 29 of the act.

Section 29 prescribes, in specific terms, the kind of security in which sinking funds can be invested. As first mortgages on real estate are not included in those securities, they are necessarily excluded as securities.

Section 30 requires the Director to investigate as to the kind of securities that have been taken for sinking funds already created. If he discovers that such sinking funds are not properly invested, he is required to give notice to the officers having control of the sinking fund to change the investment to accord with those prescribed in the act. After such notice, the officer is required to sell the security within nine months after notification by the

Director. The Commission, in its discretion, may extend this time, but no longer than twelve months from the time of the order giving the extension.

If, therefore, this transaction is completed, notwithstanding the act, it would be your duty at once to give notice that the investment must be changed. The effect of this, of course, would be, to a certain extent, to modify the salutary provisions of the act.

We think, therefore, that you can intervene at once and prohibit the completion of the transaction and require the investment to be made in accordance with the provisions of the statute. The Supreme Court of the State seems to have held that such contracts are not within the protection of the Federal Constitution, relating to the obligation of contracts.

Farmers Banking & Trust Co. v. Edgecombe Co., 196

N. C.—48.

Graham Co. v. Terry & Co., 194 N. C.—22.

SIX MONTHS SCHOOL TERM; 15c PROPERTY TAX

26 June 1931.

Your letter of June 22 received. The ad valorem tax for the support of the six months school is to be levied under the provisions of section 492, Chapter 427 (the Revenue Act) of 1931. In each county it is to be at such rate as "will be equal to a levy of 15c on each \$100 of value on the total value of real and personal property listed and assessed in each such county in the year 1930, as shown in the official reports of such counties to the State."

That quotation from the section, and the other provisions in it, show that it is not intended that the ad valorem tax is to produce a net sum equal to the amount which will be raised by the 15c on the 1930 values.

The levies required to be made under the school acts of 1927 and 1929 were directly expressed to be at such rate as would produce a net sum equal to the amount which would be raised by the tax rate prescribed on determined values. Naturally, the difference between the language used in this act of 1931 and that in the acts of 1927 and 1929 should be considered. Aside, however, from such significance, it is clear that the rate to be levied under section 492 of the Revenue Act of 1931 is not intended or required to be such a rate as would produce a certain net amount. Therefore, the rate to be levied is that which will produce a gross amount, and the tax collected and remitted to the State Treasurer would, therefore, be subject to the usual deduction. This view is further confirmed by another sentence in section 492:

The tax levy herein provided for shall be subject to the same discounts and penalties as provided by law for other county taxes and there shall be allowed the same percentage for collecting such tax as for other county taxes.

DRAINAGE DISTRICTS—JURISDICTION OF LOCAL GOVERNMENT COMMISSION

July 1931.

The Consolidated Statutes, Section 5312, constitutes Drainage Districts, created under the chapter of which it is a part, political subdivisions of the State, and it is the opinion of this department that jurisdiction of the local Government Commission attaches by reason of Chapter 60, Public Laws of 1931, in the matter of issuance of notes by such districts in anticipation of taxes, and that your commission has the same right and authority in the premises that it has in the case of any other unit under control of the Local Government Commission.

PREPAYMENT TAXES; DISCOUNT

29 July, 1931.

Section 805(8) of the Machinery Act (Chapter 428, Public Laws of 1931) provides that persons desiring to make prepayment of taxes between July 1 and October 1 of any year may do so and receive certain discounts as therein set out: 3 per cent if paid on or before July 1; 2½ per cent if paid on or before August 1; 2 per cent if paid on or before September 1; 1½ per cent if paid on or before October 1. The question has been submitted as to how this prepayment of taxes may be made in view of the fact that the tax books have not been made out and it cannot now be definitely known the exact amount of taxes for which any particular individual is liable.

This subsection provides that the payment may be made to the county or city accountant, city clerk, auditor or treasurer, as the governing body of the county or town may direct. When the payments are made, the auditor or county accountant shall certify the same to the clerk of the board of county commisisoners, and the amount paid shall be credited, together with the discount, to the taxes levied against the taxpayer.

By the inclusion of this subsection in the Machinery Act, it was, of course, intended that the appropriate facility should be afforded taxpayers for the prepayment of their taxes. I am of the opinion that it will be the duty of the governing body of the county or town to designate one of the officers described as the proper person to whom payment shall be made. The taxes for which such person may be liable shall then be estimated with such degree of accuracy as may be possible. The taxpayer may then pay to the officer designated such sum, and have the same, together with the discount for the month in which payment is made, credited on his tax account. If it should be found, when the tax books are made out, that the sum paid together with the discount allowed, is insufficient to meet the whole of the taxes assessed against such person, he would be liable for, and required to pay, the difference.

SHERIFF'S COMMISSIONS ON COLLECTIONS—15 CENT AD VALOREM TAX FOR SCHOOLS

31 July, 1931.

Your letter of July 30 received. Section 492, Chapter 427, Public Laws of 1931, provides for a fifteen cent property tax for support of the six months school term. The latter part of the first sentence in the fourth paragraph declares that "there shall be allowed the same percentage for collecting such taxes as for other county taxes." This, then, is the authority for the commission to the sheriff for the collection of these taxes. Of course, these commissions will go to the sheriff himself if he is not on salary, or be paid into the general fund of the county where by law the sheriff's fees, commissions, etc., go into that fund.

Section 22 of Chapter 430, Public Laws of 1931, is as follows:

No sheriff, tax collector, treasurer, fiscal agent, or other officer or agent of any county shall be allowed to receive any amount out of the fund received hereunder by way of commissions or allowance of any kind or nature.

The "fund" there spoken of is the appropriation made for the support of the six months school term and to be disbursed for that purpose under the provisions of said Chapter 430. The section does not at all relate to the commissions to be received by a sheriff for *collecting* the fifteen cent property tax under section 492 of Chapter 427. Section 22 of Chapter 430 was evidently put in for the purpose of preventing the payment of any commissions or fees for the disbursement of the fund set aside for support of the six months school term.

PAYMENT OF TAX BY CHECK—FAILURE OF BANK LEAVING CHECK UNPAID

7 August, 1931.

The situation presented by you is as follows:

A taxpayer presented the tax collector a check on a bank in payment of his 1929 taxes; the sheriff issued receipt and deposited the check in a local bank; check returned to the bank on which it was drawn and was charged against the taxpayer's account and cancelled. The taxpayer now holds the tax receipt and cancelled check, but the bank on which it was drawn having, in the meantime, failed, the bank of deposit charged the check back to the account of the tax collector and it has not been paid.

You are correct in your opinion that, under the circumstances mentioned above, the tax remains unpaid and the taxpayer is without either a remedy or defence, in so far as the State is concerned and the tax is still collectible.

Taxes are never considered paid until they have been paid in legal tender and in the case of the check which the tax collector was not compelled to take, in the first instance, the taxes are not paid until the check is actually collected by the State.

We think this covers the situation.

BONDS OF POLITICAL SUBDIVISIONS—EXEMPTION

21 August, 1931.

Your letter of August 13 received. Subsection 1 of section 306, Machinery Act of 1929, attempts to exempt bonds of political subdivisions of the State from taxation, but only such bonds as should be thereafter issued. The same provision is carried in a similar section of the Machinery Act of 1931.

Commissioners v. Webb, 160 N. C., 594, would seem to indicate what the Court would say on the constitutional question raised. From the reasoning there, it would seem that section 306 exempts from town taxation bonds of a town when held and owned by a resident of such town, and from county taxation bonds of a county when held and owned by a resident of that county. I am of opinion that the Legislature cannot constitutionally exempt bonds of one subdivision from taxation by another such subdivision, but that the Court would probably sustain the exemption only to the extent as just stated.

PUBLIC AND CERTIFIED ACCOUNTANTS—UNREGISTERED ACCOUNTANT—CONTRACTS
WITH COUNTY BOARD OF EDUCATION FOR AUDITING

21 August, 1931.

You inquire whether, in the exercise of the authority given you by Chapter 201, Public Laws 1929, as amended by Chapter 99, Public Laws 1931, you have the right, as Director of local Government, to approve a contract for auditing made between a County Board of Education and a person who is not registered under Chapter 261 Public Laws of 1925.

Of course you could not approve a contract made by the County Board of Education with a person who could not make such a contract without violating the law, and the answer to your question turns upon the further question as to whether a person who is not registered under the 1925 Act could lawfully make such a contract. I am of opinion that the 1925 Act, as amended, does not carry the matter to utter exclusion, and that, under proper circumstances, you have the right to approve a contract of this kind made with such unregistered person.

The 1929 Act referred to, as amended, provides that no contracts or engagements made by a County Board of Education for auditing the records shall be valid, unless reduced to writing and approved by the Director of Local Government.

Chapter 261 Public Laws 1925, (the general law regulating the "Practice of Accounting"), in section 6, makes it unlawful "for any person, firm, copartnership or association to engage in the practice of public accounting in the State of North Carolina, unless such person, or each member of such firm, copartnership or association first shall have received from the State Board of Accountancy a certificate of qualification admitting him to practice as a certified public accountant. The subject would have been less confusing except for the definition given to "the practice of public accounting" in an

amendment to this law made by Chapter 219, Public Laws 1929. To understand the amendment, we will see how the law originally stood.

Section 1 of this act originally contained a proviso as follows:

That nothing in this act shall be construed to prohibit any person, firm or corporation from performing accounting service or any similar service who does not hold himself out to be a certified public accountant or public accountant or represent that such service is performed as a certified public accountant or a public accountant.

I think the provisions of this original section of the 1925 act were in the mind of the draughtsman when the amendment of 1929 was drawn, and they are, to some extent, reflected in the amendment. This is, (as bearing on this question), as follows:

(Striking out all of section 1, Chap. 261, Public Laws 1925, including foregoing proviso:) "Section 1. The term 'Practice of Public Accounting' as used in this act is defined as follows: A person engaged in the practice of public accounting, within the meaning of this act, who offers his or her services to the public as one who is qualified to render professional service in the analysis, verification and audit of financial records and the interpretation of such service through statements and reports." Both the grammar and the logic of this amendment are bad, but it means that any person of the character described, who engages in the business of accounting, is "practicing public accounting" within the meaning of the act, and comes within the prohibition of section 6.

The purpose of the original 1925 act, before the amendment, was to protect registered or certified public accountants in whatever benefits might accrue to them by way of prestige, or otherwise, from the fact of registration or certification, and to prevent unregistered operators from using such advantages, but we must confine ourselves strictly to the foregoing amendment.

It is true that in certain relations and within limitations, one who undertakes to perform the service "holds himself out" as competent, or having the requisite skill to do it, but I do not think, though, that this presumption is sufficient to bring the person who makes an audit *ipso facto* within the definition laid down in this statute. There are too many elements involved in it.

I can easily see how a man of only ordinary skill and not claiming to be a professional "in analysis, verification and audit of financial records and the interpretation of such service through statements and reports," might make a simple audit without violating the law. In fact perhaps it needed the 1925 act to erect into a profession what was, up to that time, a mere occupation.

You are not required to adopt a policy that would extend the law to the point of exclusion not fairly intended by its terms; nor do I think you could be burdened with the duty of investigating every instance to see whether the person proposing to make an audit has offered his services to the public on the basis of the foregoing definition. It might be a more convenient rule to disapprove any contract of the kind made with any person

other than an accountant who has a certificate under the 1925 act; but I do not think that this would be fair, for the reason that I am of opinion that in individual instances, such a person would not be violating the law in making the contract for auditing.

I think you should decline to approve of such a contract, in so far as this act is concerned, only when you are satisfied or have reason to believe that the person who proposes to make the contract is offering his services to the public on the basis described in the foregoing amendment, which is now Section 1 of the 1925 act.

SALE OF LAND FOR DELINQUENT TAXES DEFERRED

31 August, 1931.

By Chapter 342, Public Laws 1931, the General Assembly authorized Boards of Commissioners to defer the sale of land for delinquent taxes from the time now provided by law, to such time as may be just and proper, but not later than the first Monday in November, 1931. Upon this, you ask my opinion as to where sale of land for delinquent taxes has been so deferred, would the Commissioners have the right to turn the tax books over to the sheriff on the first Monday in October, or at any time preceding the deferred sale of such land for taxes.

It will be observed that this Chapter 342 limits the postponement of sale of land for delinquent taxes, as therein permitted, to such sales for the year 1931.

Chapter 213 of the Public Laws 1927, re-wrote, generally, the law with respect to sale of land for taxes and settlement by the sheriff or tax collector. That act, section 4, directed the sheriff to make his report of uncollected taxes to the Board of County Commissioners on the first Monday in May and sale of land for delinquent taxes should then be made, by order of the Board of Commissioners, on the first Monday in June. As stated, Chapter 342 of 1931 permits the postponement of such sale to a period as late as the first Monday in November.

Section 3 of Chapter 213, Public Laws 1927, requires the sheriff or tax collector to make full and complete settlement of all taxes charged against him before he receives the tax lists for the subsequent year. The normal procedure is that this settlement and the delivery of the tax books should take place on the first Monday in October. Where, under authority of Chapter 342 of 1931, the sale of land for delinquent taxes has been postponed by order of the Board of Commissioners to a date beyond the time when the new tax books are ready for delivery to the sheriff, the collection of the taxes should, in my opinion, proceed upon a tentative settlement made at the time by the sheriff, in so far as such settlement is possible.

Normally, the settlement should cover such taxes as have been charged against the sheriff, except those where the sale of land for taxes has been deferred by the Commissioners in accordance with Chapter 342 of 1931. Under this procedure, I am of opinion that the Commissioners may safely and properly deliver the new tax books to the sheriff or tax collector and

he may proceed with collection of taxes at the usual time, subject to final and complete settlement by the sheriff or tax collector, following the sale of land for taxes as so deferred.

CITY APPROPRIATIONS AND BUDGET ITEMS—CHAMBER OF COMMERCE, LIBRARIES,
Y. M. C. A., Y. W. C. A., HOSPITALS, CHARITY

4 September, 1931.

Relative to your inquiry of August 28, as to the authority of municipalities to appropriate money and include in their budget above items, I think the following will cover the inquiry, as far as we are able to answer:

C. S. sections 2694 and 2702, refer to appropriations by a town for public libraries. Section 2702 permits a town to appropriate for the maintenance of any public library as much as one-fortieth of one per cent of its total tax valuation. It may, of course, establish a library of its own, under section 2694. In either event, it would have the right to include an appropriation for such purpose in its budget.

C. S. section 2832, gives very wide powers to municipalities with regard to the establishment of a system of public charities and benevolence for the aid of the poor and destitute of a city. Under the powers given in this section, I think that a town or city might make a reasonable allowance in its budget and appropriate money for charitable and benevolent purposes and might go to the extent of adopting and approving a recognized charitable organization for the carrying out of its benevolences and make the appropriation to them, if the public good could be more conveniently or better served that way.

An appropriation to the Y. M. C. A., Y. W. C. A., or other benevolent institutions would, in my opinion, not be unlawful, provided those organizations undertook to do charitable or benevolent work in the town.

As to hospitals, still referring to the general powers given a town to establish hospitals, clinics or dispensaries for the poor and establish a system of public charities and benevolence for the aid of the poor and destitute of the city, I think it would be legitimate to make a definite appropriation to be carried in the budget to a hospital, in compensation for charitable work done by that hospital for the poor of the city. There ought, however, to be some definite understanding as to the services rendered by such hospital.

As to firemen, section 2801, C. S., gives municipalities power to establish and maintain fire departments and fix the compensation of those connected with the department. An appropriation by a town or city for the expenses of the firemen to conventions and like meetings, might fairly come under the power to fix compensation to members of the fire department and might fairly be considered a part of such compensation and, therefore, a proper item of the budget and appropriation.

A municipality cannot, as I understand the law, carry an appropriation in its budget for a Chamber of Commerce, nor, in fact, make an appropriation therefor. *Ketchie v. Hedrick*, 186 N. C., 392.

It is very clear, under this decision, no tax could be levied for any purpose, except by vote of the majority of the qualified voters and I do not see any authority even for making an appropriation, although the money might be in hand.

In *Nash v. Monroe*, 198 N. C., 306, and 200 N. C., 729, the court held that the town might make an appropriation for equipment for its hospital, if it had the money at the time, but, this was in view of the fact that C. S. section 2832 gave authority for the establishment and maintenance of the hospital.

Referring again to the subject of charity and benevolence, it seems to me that the use of the two terms rather amplifies the authority of a town or city in dealing with appropriations for purposes ordinarily called charitable. In establishing the system of charity and benevolence, I think a town might have its own organization, its own method of dispensing charity, in whole or in part, and might, as I have said, recognize charitable organizations, in dispensing its money to be used for such purpose.

The above is written without reference to the special provisions given to any particular town or city by its own charter.

CHAIRMAN OF COUNTY BOARD OF COMMISSIONERS IS HEAD OF DEPARTMENT
UNDER SEC. 16, CH. 146, P. L. 1927

29 September, 1931.

Upon the letter to you of Messrs. McLean & Stacy of Lumberton of September 28, you ask my opinion as to who is "the head of the department" within the meaning of section 46, fiscal code, section 16, Chapter 146, Public Laws of 1927, with respect to signing the warrant or order against the general fund of a county. Within the meaning of that section, the head of the department is, in my opinion, the chairman of the county board of commissioners.

BORROWING MONEY FOR OPERATION OF EXTENDED SCHOOL TERM

2 March, 1932.

In response to your inquiry, I advise with respect to law governing borrowing money for operation of extended school term, as follows:

Some counties have quoted a county-wide tax to be used in supplementing the funds for the six months school term. The special school taxes levied tended school term in such counties during the fiscal year in which levied in pursuance of such elections are primarily for maintenance of the ex- and collected. These county-wide special school taxes, so levied and collected for the fiscal year 1931-32 are then primarily for the purpose of maintenance of the extended school term in such county for the school year 1931-32.

The county board of education has no authority to borrow in anticipation of the collection of such taxes. The board of county commissioners may

borrow in anticipation of the collection of such taxes under the limitations as set out in Chapter 81, Public Laws 1927, as amended, and the Local Government Act of 1931. Such borrowings may not exceed 80 per cent of such uncollected special school taxes at the time of the borrowing. The notes are payable not later than thirty days after the expiration of the current fiscal year. The notes so given are not general county obligations, but the county commissioners can pledge for their payment only the special school taxes so voted in the county and levied and collected for the current fiscal year.

A large number of school districts have voted special school taxes under the provisions of Article 17 of the School Code, section 219, et seq. The taxes so voted are for the purpose of supplementing the funds for the six months school in the particular district. The special taxes levied by authority of such elections are primarily for the maintenance of the extended school term in the district during the fiscal year in which levied and collected. The special school taxes so levied and collected for the fiscal year 1931-32 are, then, primarily for the purpose of maintenance of the extended school term for the school year 1931-32.

The committee of such special school tax district has no authority to borrow money in anticipation of the collection of taxes. Neither does the county board of education. The board of county commissioners may borrow in anticipation of the collection of special school taxes in districts in the county under the limitations as set out in Chapter 81, Public Laws 1927, as amended, and the Local Government Act of 1931. Such borrowings may not exceed 80 per cent of the uncollected school taxes of the particular district at the time of such borrowing.

The notes so made are payable not later than thirty days after the expiration of the current fiscal year. Such notes are not general county obligations and the county commissioners can pledge for payment of a note issued in aid of a particular district only the special school taxes of that particular district for the current fiscal year.

Unless prohibited by its charter, a special charter district may, by action of its board of trustees, borrow against uncollected special school taxes for the current fiscal year, subject to the provisions of the Local Government Act of 1931. The special school taxes levied in such special charter district are primarily for maintenance of the extended school term during the fiscal year in which levied and collected. The special taxes, so levied and collected for the fiscal year 1931-32 are, then, primarily for the purpose of maintenance of the extended school term for the school year 1931-32. A special charter district would have the right to pledge only the special school taxes of the current fiscal year for the payment of such loans.

If, subsequently, there is found to be a surplus from taxes collected out of a levy for a preceding school year, such surplus may, of course, be applied to payment of such loans. Special school taxes collected in such special charter district for a subsequent fiscal year may also be so applied to such indebtedness, if there be an excess from such taxes over and above the needs for running the extended school term for such subsequent school year in which such surplus special school taxes were collected.

DEPOSIT LOCAL FUNDS—PREVIOUS AGREEMENT WITH BANK—NOT BINDING
AS AGAINST LOCAL GOVERNMENT BOARD

8 March, 1932.

Your letter of March 5 received. The situation described is that wherein a town, before the passage of the Local Government Act, deposited its sinking funds in a bank without bond, under agreement to leave such funds in the bank for a period of five years. You inquire whether the provisions of the Local Government Act, requiring the method of securing such funds, would be applicable to funds so deposited.

I think so. In *Trust Company v. Edgecombe County*, 196 N. C., 48, the Supreme Court held that an arrangement between a county and a bank, under C. S. 1389, is not such a contract between the county and the bank contemplated by the provision of the Constitution prohibiting the impairment of the obligation of a contract. It, therefore, held that the provisions of section 19, Chapter 146, Public Laws 1927, would be applicable to relations between the county and the bank, although the supposed previous contract contemplated existence beyond the time when that Act went into effect. It also held that, under the circumstances, the county could require the depository bank to give bond for security for public funds.

Though the case is not exactly on all fours with your situation, it would seem to be authority for the conclusion that the provisions of the Local Government Act must be complied with, regardless of preceding arrangement between a bank and public authorities.

COLLECTION PAVING ASSESSMENT; STATUTE OF LIMITATIONS

14 March, 1932

Section 2713 of the Consolidated Statutes treats assessments against property for local improvement as an entirety and creates a lien in favor of such assessment against property from the time of the confirmation of the assessment roll. Therefore, I am of opinion that the Statute of Limitations does not apply to the several instalments of the assessment and that this may be collected by the municipality any time within the ten year period.

OPINIONS TO INDUSTRIAL COMMISSION

WORKMEN'S COMPENSATION ACT—SCHOOLS—COUNTIES—SELF-INSURERS

9 July, 1931.

Under the original Workmen's Compensation Act, Chapter 120, Public Laws of 1929, the said act and its terms applied generally to employees of the State and its subdivisions. Under section 8 thereof, neither the State nor any of its subdivisions, nor any of their employees, had the right to reject the provisions of the act.

Under section 67 of the act, employers might become self-insurers by complying with the requirements of the Commission as permitted therein. The Commission adopted the rule that the State and its subdivisions might become self-insurers without giving any bond or proof of financial ability to pay compensation direct to the employee.

Section 30 of the school law of 1931, Chapter 430, Public Laws, is as follows:

That no allowance shall be made for compensation insurance by any of the counties of the State as the same may affect the school fund.

Under the acts of 1931, the schools now become a State system. The State is the employer of the teachers and others rendering service for the six months school term. I interpret section 30 to mean that no part of the appropriation for the six months school term shall be used by any county to which the money may be sent, or by the State itself, in procuring and paying for compensation insurance for these employees. The law, however, has not been changed so as to withdraw these employees from the provisions of the original act, Chapter 120, Public Laws of 1929. Therefore, the provisions of that chapter, particularly section 2 (b) and section 8, bringing State employees under the act and preventing withdrawal from it by the State or any of its employees, are now in force and applicable. This means, then, that with respect to teachers and other employees for the six months school term the State becomes a self-insurer. The manner and method of caring for this is, of course, for the State Board of Equalization under the broad powers conferred upon it with respect to its approval of the budget for the six months school term.

For an extended term beyond the six months operated by a county under a county-wide tax, the county is the employer. The fact that the State contributes toward the support of this extended term out of what is known as the tax reduction fund does not alter that situation. Under such circumstances, the county is in charge of affairs, responsible for the operation of such extended school term, and liable to the extent which the law creates any liability under the compensation laws. The State would have no responsibility for, nor incur any liability with respect to, injuries sustained by employees while engaged in the performance of their services for this extended county-wide term.

A substantially similar situation exists with respect to the extended term provided by a particular district. In that case the teachers and others are employees of the district, the conditions, of course, being subject to such control as county authorities may have over the funds of the particular district. For this extended term for the particular district liability would rest upon the funds available for that particular district out of its special taxes.

By an amendment to the Workmen's Compensation Act contained in Chapter 274, Public Laws of 1931, any county or special school district may, by proper action of its governing body, "exempt itself entirely from the operation of this act." This is an amendment to section 8 of the original compensation act, Chapter 120, Public Laws of 1929. If the county should take such action in exempting itself from the operation of the act, the exemption so taken would, of course, apply to teachers and other employees in the extended term established by vote for a county-wide special tax. It would, of course, also apply to all other employees.

If the governing authorities of the special school district should take such action, the exemption, then, would apply to the teachers and employees in and for the extended term in that district.

If such action be not taken by the governing body of any of these political subdivisions, they would remain subject to the compensation act with respect to their employees, as set out above.

When appropriate action is taken by the governing body of the county or special school district exempting itself from the operation of the Workmen's Compensation Act as permitted under section 1 of Chapter 274, Public Laws of 1931, the result is that such county or school district is entirely exempt from the operation of the act. When that is done, such county or school district does not subject itself to the disadvantages imposed by section 15 of the original act, Chapter 120, Public Laws of 1929, which would flow from rejection of the act by the ordinary employer. Upon such action the county or school district comes entirely out from under the act, and its relation to its employees is the same under constitutional and common-law principles and apposite statutes as was the case before the act of 1929 was passed.

Section 30 of the new school law, Chapter 430, Public Laws of 1931, clearly prevents any county from using any part of any school fund controlled by it for the purpose of paying for compensation insurance. This, of course, would prevent the use by the county of funds for an extended county-wide term for compensation insurance. However, it does not prohibit a special tax district from using any of its special tax funds for compensation insurance for its employees during the extended term for which such district is responsible.

WORKMEN'S COMPENSATION ACT; FEES OF ATTORNEYS, PHYSICIANS, ETC.

25 Jan., 1932.

Your letter of January 18 received. I am of opinion that the fees of attorneys and physicians, and charges of hospitals, for services under the

Workmen's Compensation Act are subject to the approval of the Commission. This includes fees of attorneys for defendant as well as those of attorneys for the claimant.

Under section 54.b, witnesses are to receive the same fees and mileage allowable for witnesses in civil cases in the courts of the county where the hearing is held.

C. S. 3893 provides: "That experts, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may in its discretion order." This reference is primarily to witnesses attending in cases in the Superior Court. In the case of *In Re: Hayes*, 200 N. C., 133, the Court held that the Industrial Commission had the power to fix the fees of expert witnesses appearing before it.

It is settled, then, that fees of such expert witnesses as may appear and testify before the Industrial Commission may, and should, be fixed by the Commission.

DUTIES OF DIRECTOR OF PERSONNEL AND AUTHORITY OF ADVISORY BODGET COMMISSION; CHAIRMAN AND MEMBERS OF N. C. INDUSTRIAL COMMISSION

7 April, 1932.

In your letter dated March 22, and received by me a few days ago, you submit certain inquiries which I answer as follows:

(1) Is the salary of the Chairman of the Industrial Commission under the jurisdiction of the Division of Personnel?

Answer: No. The authority conferred upon the Director of Personnel by Chapter 277, Public Laws of 1931, does not extend to fixing the salary of the Chairman and members of the Industrial Commission.

(2) If not under the jurisdiction of the Division of Personnel, what jurisdiction, if any, has the Advisory Budget Commission over the salary of the Chairman of the Industrial Commission?

Answer: This question is answered by the following extract from an opinion of this office given Governor Gardner January 30, 1932:

By section 9, Chapter 274, Public Laws of 1931, amending section 52.a of Chapter 120, Public Laws of 1929, the salaries of the Chairman and each member of the Industriial Commission are to be fixed by the Governor, subject to the approval of the Advisory Budget Commission.

(3) Has the Advisory Budget Commission the legal power to fix any salary for the Chairman of the North Carolina Industrial Commission or can it only approve or disapprove a salary fixed by the Governor?

Answer: It will be seen by reference to the above quotation from the opinion given Governor Gardner, and to the statutes therein referred to, that the Advisory Budget Commission does not have the power to fix the salary of the Chairman of the Industrial Commission. Its authority is limited to approving or disapproving of such salary when fixed by the Governor.

(4) Assuming that the salary of the Chairman of the Industrial Commission was fixed by the Governor immediately following the adjournment of the 1931 General Assembly, and such salary approved by the Advisory Budget Commission, and that during the month of January or February, 1932, at a joint meeting of the Division of Personnel and the Advisory Budget Commission the salary of the Chairman of the Industrial Commission was reduced from \$4,500 to \$4,250 with the Governor present and opposing such reduction, what is the legal effect of such action under the circumstances related?

Answer: The salary will remain unchanged as fixed at the prior time by the Governor and approved by the Advisory Budget Commission. As stated above, the Director of Personnel has nothing to do with fixing the salary of the Chairman of the Industrial Commission. Under the specific language of the statute, the Governor must act in the first instance. He fixes the salary, subject to approval by the Advisory Budget Commission. When the salary has been once so fixed, it remains in force until changed or fixed anew in accordance with the statute—that is, by the Governor, with the approval of the Advisory Budget Commission.

OPINIONS TO STATE BOARD OF ELECTION AND OTHER ELECTION OFFICIALS

ELECTION LAWS; BALLOTS

2 September, 1930.

You ask me whether there must be separate ballots for United States Senator, members of Congress and State officers, or may names of candidates for all these positions be put on one combined ballot?

The first sentence in section 9, Australian Ballot Law, is as follows:

There shall be seven kinds of ballots, called respectively:

- Official ballot for Presidential electors;
- Official ballot for United States Senator;
- Official ballot for members of Congress;
- Official State ballot;
- Official county ballot;
- Official township ballot; and
- Official ballot for constitutional amendments or other propositions submitted.

At the end of said section 9 the following proviso appears:

Provided, that the State Board of Elections or the county board of elections may in their discretion combine any one or more of the ballots.

To hold that the proviso does not confer authority to combine the ballots into one would nullify its plain language and render it meaningless. One of the settled rules for the construction of a statute is that effect must be given to each and every part thereof. Generally, a proviso is to be so construed as to give the act an effect different from that which it would have without such proviso.

And above all, it is not to be presumed that the Legislature intended for part of a statute to be inoperative and mere surplusage, *Ruffin, J., in Pugh v. Grant*, 86 N. C., 47.

See also: *McDonald v. United States*, 279 U. S., 12, 73 L. ed 582.

The language is plain and its meaning clear. The proviso expressly confers upon the State Board of Elections authority to combine the ballots so as to put the names of candidates for United States Senator, Congressman and State offices on on a single ballot or the same sheet of paper.

SENATORIAL PRIMARY AND ELECTION

20 October 1931.

In reply to the questions addressed to this office in yours of October 19, 1931, we answer as follows:

1. Will it be the duty of the Governor to issue his writ for the election by the people at the next General Election to be held on Tuesday next

after the first Monday in November, 1932, of a United States Senator to fill the unexpired part of the term from the date of the canvassing of the returns of the election until March 4th, 1933?

Yes.

2. Should a candidate for the nomination as United States Senator, before participating in the next Primary Election, indicate in his Notice of Candidacy whether he is contesting for the unexpired term expiring on March 4th, 1933, or for the full term beginning on March 4th, 1933, or for both terms?

Yes.

3. In the event one candidate filed a Notice of Candidacy for both the unexpired terms and the full term, should the total filing fee be \$50 or \$100, under Section 6023 of the Statutes?

The candidate should file a fee of \$50 in each case, the total of \$100.

4. Section 9 of Chap. 164 of the Public Laws of 1929, as amended, provides that the State Board of Elections may, in their discretion, combine any one or more of the ballots for either the Primary or General Election. In view of this provision, would it be in the discretion of the Board of Elections to print the names of the candidates for nomination for United States Senator for both terms on one ballot, provided the ballot clearly shows what terms are being voted for, or would it be necessary to have a separate ballot for the unexpired term?

In my opinion, the names of the candidates for both terms might be placed upon the same ballot, provided the ballot clearly shows what terms are being voted for and the candidates who are proposing themselves for the term.

CANDIDATE FOR OFFICE; WITHDRAWING NAME; REFUND OF FILING FEE

26 May, 1932

You submit to me letter of Mr. Charles H. Cowles, dated at Wilkesboro May 20, in which he withdraws as candidate on the Republican ticket for State Superintendent of Public Instruction. You inquire whether Mr. Cowles is entitled to return of his filing fee.

This is controlled by C. S. 6024. According to that, the person who has filed notice of his candidacy may withdraw therefrom before time for filing such notice of candidacy shall have expired, and have his filing fee returned.

Mr. Cowles' letter is dated May 20, 1932. That was four weeks after the time for filing notice of candidacy for State Superintendent of Public Instruction had expired. He is, therefore, not entitled to return of his filing fee.

SUMMARY WITH RESPECT TO CONDUCT OF PRIMARY ELECTIONS

23 June, 1932.

Because of some complaints and numerous inquiries, I submit this summary of the law with respect to the conduct of primary elections. Unless other-

wise stated, the references are to sections of the pamphlet copy of the election law prepared and distributed by the State Board of Elections.

(1) An Independent has no right to vote in a Democratic or Republican primary. A Democrat or Republican has no right to vote in the primary of the other party. A person who voted in the primary of one party on June 4 thereby fixed his present party status, and does not have the right to vote in the primary of the other party on July 2. C. S. 6027 and 6031.

(2) Only official ballots, bearing the facsimile signature of the chairman of the State or county board of elections, may be voted in the primary. All ballots are to be kept within the precinct election enclosure from the opening to the closing of the polls. Ballots may not be delivered to electors until they enter the polling place for the purpose of voting, except upon proper application for the purpose of voting by the absentee method, as hereinafter set out. Section 139.

(3) All registrars, judges of election, and any assistants appointed under section 156, are required to take the following oath:

I do solemnly swear that I will administer the duties of my office without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition, and that I will not keep or make any memorandum of anything occurring within the voting booth, except I be called upon to testify in a judicial proceeding for a violation of the election laws of this State: so help me, God.

Sections 139 and 156.

(4) The friends of candidates have the right to present their views to other voters with respect to the candidates of their choice, if it be done in the proper way and not within the polling place, nor within fifty feet thereof. Within these limitations they may use sample ballots in aiding and instructing voters how to mark the official ballots. Section 140.

(5) The initials of the judge of election and the number of the ballot are not to be placed on the ballot. The voter must go to the booth for the preparation of his ballot. He is forbidden to mark his ballot at any place other than in the booth, or to allow the face of it to be seen by any other person, or to carry any ballot with him from the polling place. When the act of voting has been completed, the voter must leave the polling place, but must use or return all ballots delivered to him before so leaving. Only one person is to be allowed in the booth at the same time, unless such person is one of those permitted to receive assistance, as hereinafter set out. Only election officials, electors engaged in the act of voting, and peace officers for proper purposes are to be allowed within the polling place or election enclosure while the primary is being held. Sections 144, 145 and 150.

(6) No markers are allowed in primary elections. A voter may be accompanied into the election booth and assisted by any member of his family, or he may, upon his own request, be assisted by any election official, or any other person so requested by him and approved by a majority

of the election board, composed of the registrar and judges of election. A majority of this board may, in their discretion, refuse to permit such assistance by such other person, although it is requested by the voter. Section 147.

(7) Where it is "necessary," the county board of elections may select assistants for the election officers in any precinct where there are as many, or more than three hundred registered voters. This necessity will usually only grow out of the large number of voters at the particular precinct, or the number and length of the ballots. Section 156.

(8) It is forbidden for any one within the polling place or within fifty feet of the ballot boxes to electioneer, suggest, or endeavor to induce or persuade any voter to mark his ballot in any particular way. This applies to election officials, including the assistants that may be named under section 156, and also to persons who, under the law, may, and are, permitted to accompany the voter into the booth for the purpose of affording assistance. The aid to be given by an election official, assistant, or other person permitted to assist the voter in the booth is not in helping the voter to determine for whom he shall vote. It is to assist the voter in marking his ballot in the way such voter desires. Any effort on the part of one so assisting the voter to persuade or induce him to vote for or against any particular candidate is a misdemeanor. Sections 147, 148, 150, 152.

(9) Particular attention is called to sections 150 and 151, which describe certain offenses in connection with preparation and casting of ballots, and which sections place the duty upon election officers to prefer charges against persons offending.

(10) The assistants provided for in section 156 are regular election officials. They are sworn as other officers. Their duty is to assist the registrar and judges of election in holding the election. Sections 139 and 156.

(11) There can be no further registration of voters for the second primary, other than such as may have become legally qualified after the first primary, and such persons may register on the day of the second primary, and shall be entitled to vote.. Residential requirements for voting are: Residence one year in the State and four months within the precinct. A person who has removed from one precinct to another in the same county within the four months period may go back to his original precinct and vote. If he has removed from one precinct to another in the same county for a longer period than four months preceding the primary, he may not go back to his original precinct and vote. A person who has removed from one county to another may not, under any circumstances, go back to that other county and vote, nor may he send an absentee ballot to be voted in the county of his previous residence. Constitution, Article VI, section 2.

(12) Persons who are absent from the county on the day of the primary, or physically unable to attend the polls, may vote by the absentee method. One desiring to vote because of absence from the county may do so by using Certificate A, making the oath as therein set out. One desiring to vote because of physical inability to attend the polls, may use Certificate

B, this to be supported by his oath before the proper official as to his physical disability, or the certificate of a physician to that effect. Sections 33 and 36.

(13) Where the right to vote by the absentee method is to be supported by the oath of the elector, either as to absence from the county or physical inability, the oath must be *actually administered* to such person. It is not sufficient that he shall have signed the oath in the presence of the notary or other officer. Unless the oath is actually administered, the ballot may be rejected and thrown out. Section 33, and *Boulden v. Davis*, 200 N. C., 24.

(14) The person desiring to use the absentee method must make application in person or by mail, or through another by written order of the applicant. The ballots should not be delivered for voting by the absentee method when one person simply comes or writes for them for the use of another. A person assuming to act as agent for another in making application for the absentee certificates and ballots for that other, must be authorized to do so in writing by the person desiring to receive and use such absentee certificates and ballots. Sections 33, 34, 37.

(15) The absent elector must sign his name on the ballot, and a ballot not so signed must be rejected and not counted. Section 41.

(16) Any applicant, physician, election officer or other person making any false oath or false certificate in connection with the application for ballots, return of ballots, obtaining ballots, or otherwise relating thereto, or any election official violating the provisions of the absentee voters law, is declared to be guilty of a misdemeanor. Any person assuming to cast an absentee ballot by fraudulently signing the name of a regularly qualified voter is declared to be guilty of a forgery. Sections 38, 161.

(17) Election officers have the full protection of the law in the performance of their duties as against any efforts to interfere with holding of the primary, or assaults upon them while so engaged. Sections 173 (3) and (4), and 174 (10) and (11).

ABSENTEE BALLOTS: DISPOSITION AFTER BEING COUNTED

29 June, 1932.

Considerable confusion exists as to what should be done with absentee ballots after they are counted. This apparently grows out of some difference in the language of sections 37, 41 and 160, pamphlet copy of election law.

By express provision of section 41 as amended in 1929—now C. S. 5966—it is required that such absentee ballots, with the accompanying certificates, shall be returned in a sealed envelope by the registrar and poll-holders with their certificate of the results of the election. The envelopes containing these ballots and certificates should be deposited with the clerk of the superior court and by him kept for six months, or, in case of a contest

in the courts, until the result is finally determined. They should then be delivered by the clerk of the superior court to the chairman of the board of elections, and by him preserved in the records of his office.

STATUS OF SOCIALIST PARTY; CANDIDATES FOR PRESIDENTIAL ELECTORS;
OFFICIAL BALLOT

22 July 1932.

You submit to me letter of Mr. Alton A. Lawrence of Chapel Hill, in which he asks for your ruling as to status of the Socialist party in this State, and as to whether, and by what process, that party may name candidates for presidential electors and have their names placed upon the official ballot.

C. S. 5913 is as follows:

The words "political party," as used in this subchapter, shall be construed to mean every such political party or organization whose candidate for governor received as many as fifty thousand votes in the election held August second, one thousand nine hundred.

And C. S. 6052 is as follows:

The term political party as herein used shall include all political parties having candidates who were voted for state offices at the general election in nineteen hundred and fourteen, and, in addition, any political party which may be declared to be such by a declaration signed by ten thousand legal voters and filed with the state board of elections thirty days before the time fixed for candidates for state offices to file notices with said board of their candidacy.

This latter section was enacted as a part of the primary law, section 31, Chapter 101, Public Laws of 1915. It will be noted that the reference to the term "political party" in this latter section is to it as used in the primary law.

Independent candidates may be put on ballot under the provisions of section 6, Chapter 164, Public Laws of 1929 (the Australian Ballot Act), as amended by section 1, Chapter 223, Public Laws of 1931, which is as follows:

The boards of election shall cause to be printed upon said ballots as an independent or non-partisan candidate, the name of any qualified voter who has been requested to be a candidate for office by written petition signed by at least ten per cent of those entitled to vote for a candidate for such office according to the vote cast in the last gubernatorial election in the political division in which such candidate may be voted for, when such petition is accompanied by an affidavit from such proposed candidate that he seeks to become an independent or non-partisan candidate and does not affiliate with any political party: Provided, such petition is filed with said board of elections at or before the time prescribed by law for the nomination of candidates by the political parties within the particular political division. The written petition provided herein, in municipal elections, shall be signed by at least ten (10%) per cent of the votes cast for the candidate running, in the last municipal election, for the particular office.

It is evident that C. S. 6052 relates to participation by a political party as therein defined in the primary for the purpose of selecting such of its candidates for public office as are subject to nomination in such primary. The time has passed by when a political group or organization may qualify for such participation under C. S. 6052.

Presidential electors of the Democratic and Republican parties (the only two groups or organizations at present recognized as political parties under our law) are not nominated in the primary, but under the voluntary rules of these two political organizations.

Section 37 of Chapter 164, Public Laws of 1929 (the Australian Ballot Act) confers certain general powers upon the State Board of Elections as follows:

The State Board of Elections shall have general supervision over the primaries and elections provided for herein, and may delegate its authority to county boards appointed by it, and in case where sufficient provisions may not appear to have been made herein may make such regulations and provisions as it may deem necessary: Provided, none of the same shall be in conflict with any of the provisions of this act.

I reach the conclusion, then, that the State Board of Elections may, in accordance with the authority conferred upon that body by section 37 of Chapter 164, Public Laws of 1929, quoted above, make such reasonable and appropriate rules and regulations as it may deem necessary for the placing of the names of nominees for presidential electors of other political groups or parties upon the official ballot. Your Board could not now permit the placing on the official ballot of the names of nominees for State offices of such other political groups or parties, for the reason that candidates for these offices are required to be nominated in the primary.

Your Board would have the right to name the date by which its rules and regulations on the subject must be complied with, in order that the names of nominees for such presidential electors may be placed on the official ballot.

ELECTION LAW; CANDIDATE FOR OFFICE MAKING PROMISES AS TO REDUCTION
IN SALARIES—HIS OR OTHERS

21 October, 1932.

A candidate for public office may run on a platform advocating a reduction in salaries of public officers and employees, including his own, or a reduction in his own salary alone. His advocacy of a reduction by law of such salaries or of the salary of the office for which he is a candidate alone would in no sense be a violation of the law. But an offer by a candidate for public office to serve, if elected at a less salary than that which is, or may be, fixed by statute, is contrary to public policy and a violation of our Corrupt Practices Act. Section 10.2, Chapter 348, Public Laws of 1931 (the Corrupt Practices Act). The subject is discussed and cases collected in 22 R. C. L., 537, and 70 A. L. R., 972. Leading cases on the subject are those of *State v. Mayor of Nashville*, 54 Tenn., 427; *Bush v. Head*, 154 Calif., 277; *State v. Etting*, 29 Kan., 397, and *Prentiss v. Dittmer*, 93 Ohio St., 314.

In the *Prentiss v. Dittmer* case, Prentiss, a candidate for Common Pleas Judge, made the offer to accept, in the event of his election, only that portion of the stipulated salary payable by the State, and agreed not to accept a portion payable out of the local treasury.

Prentiss received a majority of the votes cast. There was no evidence showing that any voter was actually induced to vote for him by reason of the promises made. The Court held that such promises were contrary to public policy, a violation of the Ohio Corrupt Practices Act, and that such corrupt practice vitiated the title of Prentiss to the office, and sustained judgment ousting him therefrom.

Such a promise is also void and unenforceable. The promise being void, the candidate making such promise, when elected, would not be estopped to claim the salary fixed by law for the office.

ELECTION LAW—GENERAL

18 October, 1932.

Certain questions have been submitted to me by your office and others relating to the election law. I undertake to answer these questions as follows:

(1) A voter has the right to write in another name in place of the name of a candidate on the official ballot, and to vote for the person whose name is so written in by making the proper cross (X) mark in the square to the left thereof.

(2) A voter has the right to paste a sticker, with another person's name thereon, over the name of a candidate on the official ballot, and to vote for the person whose name is on such sticker by making the proper cross (X) mark in the square to the left thereof.

(3) A voter does not have the right to paste a single sticker over the entire column of any party represented on the official ballot. Such act would result in the substitution of an entirely new or different party ticket on the official ballot.

(4) No advertising material must be left in the voting booths. A voter desiring to use a sticker may carry such sticker with him into the booth, but must not leave any such sticker or other material therein.

(5) The names of independent candidates should be printed in a column parallel with that of the party column.

(6) Election officials should not permit voters to mark or prepare their ballots at any place other than within the booths. The normal way of marking the ballots is by placing a cross (X) mark in the party column, when one desires to vote a straight party ticket, or in the square opposite the name of the particular candidate or candidates for whom the person desires to vote, when he is not simply voting a straight party ticket. Any "check mark or other clear indicative mark" should be counted as indicating choice of the voter, as well as the cross (X) mark. Section 142, election law, or section 21, Chapter 164, Public Laws of 1929.

(7) If the voter marks any one candidate on the official ballot, whether the candidate be Republican, Democrat, Socialist or Independent, he should mark all for whom he wishes to vote; otherwise, the ballots will not be counted except for the persons indicated by the cross (X) mark.

I cannot state the law more clearly than it is set out in the following sentence in section 130, pamphlet copy of the election law: "A mark in the circle will not be counted if any one candidate on the ballot is marked."

(8) C. S. 5979 was not repealed by the Australian Ballot Act. That section is as follows:

"The ballot may be deposited for the voter by the registrar, or one of the judges of election, or the voter may deposit it if he chooses."

(9) C. S. 5929 and 5947 impliedly, if not directly, contemplate and require that registrars shall be residents and voters of the precincts for which they are appointed. Markers must be bona fide electors of the precincts for which they are appointed. Section 26, Chapter 164, Laws of 1929.

(10) The Chairman of the County Board of Elections, or the registrar, as the case may be, must keep a record of applications for absentee ballots, the details with respect to which are set out in section 1, Chapter 329, Laws of 1929. The names of all such absentee voters to whom the required certificates and ballots have been supplied by the chairman of the County Board of Elections, or the registrar, must be posted on the morning of the election by the registrar at some public place at the voting precinct. The statute does not, however, prohibit or prevent the issuance of such certificates and ballots on the day of the election to voters coming within its terms. See opinion of June 3, 1932—Page—.

(15) When requirements of the statute have been met, the absentee certificates and ballots may be delivered by the Chairman of the Board of Elections, or the registrar, as the case may be, to the applicant in person, sent to the applicant by mail, or delivered to the person who has been authorized by the applicant to make the application for him.

RIGHT OF REGISTRANT TO HAVE NAME REMOVED FROM BOOK—BOND ELECTION

31 August, 1931.

Mr. Maxwell has submitted to me your telegram of today, asking if voters who expect to be out of the city on election day may have their names removed from the registration book. No. This was decided in *Williams v. Commissioners*, 176 N. C., 554, with respect to a special school tax election. It was there held that upon such election, where one who is qualified to vote is duly registered, under the law the registrar is without authority to erase his name from the registration book at the request of the registrant. The registration book is in the nature of a public record which may not be changed except by some method provided by law.

I regard this opinion as relating to your special bond election and do not recall any statute which permits removal of such registered voter from the book in such bond election.

INDIVIDUAL FILING NOTICE OF CANDIDACY; PARTY AFFILIATION

11 April, 1932.

It appears from your letter of April 9 that in 1928 and again in 1930, a particular individual filed notice of his candidacy for nomination as town-

ship constable in the Democratic primary, signed the required pledge, and each year his name was placed on the ticket as such candidate. In each year he was defeated for the nomination. In 1928, after being so defeated for the Democratic nomination, he ran in the general election as an independent candidate for township constable. In 1930, after being defeated for the Democratic nomination for township constable, he supported the Republican ticket and was designated as one of the Republican markers, and served in that capacity.

This individual now desires to file notice of his candidacy for Democratic nomination for constable in his township. You inquire whether he may do so.

In C. S. 6022 will be found the form to be used by one desiring to file notice of his candidacy for nomination in the legalized primary. That form is as follows:

I hereby file my notice as a candidate for the nomination as.....
in the Primary Election to be held on..... I affiliate with
the.....party, and I hereby pledge myself to abide by the
results of said primary, and to support in the next General Election
all candidates nominated by the.....party.

The statute makes no requirement that the candidate filing his notice shall set forth his prior party affiliation. The notice does include the statement of fact from a candidate seeking nomination in the Democratic primary, that he affiliates with the Democratic party, pledges himself to abide by the results of the primary, and support in the next general election all candidates nominated by the Democratic party.

The law imposes no disqualification upon becoming a candidate because of prior failure to observe that pledge. Nor does it require any statement or determination as to when a candidate's party affiliation began, or prior deviations therefrom.

I am of opinion, then, that the county board of elections would not have the right to reject this man's notice of candidacy because of his failure to observe the pledge given by him on two previous occasions.

ROTATION OF SENATORIAL CANDIDATES; PRIMARY

11 April, 1932.

C. S. 6014 sets out the method whereby there may be an agreement for rotation of senatorial candidates in districts composed of more than one county. The act from which this section is taken, Chapter 192, Public Laws of 1911, evidently contemplated nomination of the senatorial candidate by the method prescribed for the nomination of county officers in the particular county entitled to the senatorial nominee. However, there have been subsequent changes in other sections of the election law which produce a different result.

By C. S. 6054, certain counties are excepted from the primary law in the nomination of their candidates for county offices and members of the House of Representatives. It will be noted that this section does not exclude the

nomination of candidates for the State Senate from the primary, but has been limited in the various amendments to it to the nomination of candidates for county offices and members of the House of Representatives.

The concluding phrase in C. S. 6022 as now rewritten is as follows:

Every candidate for selection as the nominee of any political party for the office of State Senator, regardless of any party agreement for rotation of candidates in senatorial districts of more than one county, member of the House of Representatives, and all county offices, shall file with the county board of elections of the county in which they reside at least two weeks before such primary is to be held, a like notice and pledge.

C. S. 6028 as now rewritten requires that in senatorial districts in which no agreement for rotation exists, as permitted under C. S. 6014, the chairman or secretary of the county board of elections of the residence of candidates who have filed with such county board of elections, shall certify the names of all such candidates to the county board of elections of all other counties in such senatorial district.

The fact that candidates for the State Senate are to be selected in the primary is conclusively established by the concluding proviso at the end of C. S. 6025:

Provided, that with respect to the selection of a candidate for the State Senate the provisions of section 6014 of this chapter shall apply, except that such candidate shall be selected in a primary as authorized herein in the county entitled to name the candidate for that election, and where such candidate is named by one county the same provision as to notice and statement of moneys spent shall apply as if there were only one county in the district.

C. S. 6054, as stated above, does not exempt candidates for the State Senate from selection in the primary. Where there is an agreement for rotation under C. S. 6014, the candidate is to be selected in the county entitled to make the nomination for the particular year. Where there is no agreement for rotation, the names of all candidates are certified by the county board of elections of the county of the candidate's residence to other county boards of election of the senatorial district. But in all cases, candidates for the nomination for the State Senate are to be selected in the legalized primary.

FILING NOTICE OF CANDIDACY AFTER TIME SPECIFIED; NOT PERMITTED

26 May, 1932.

You state that certain persons who had announced their candidacy for nomination in the Democratic primary for House of Representatives or certain county offices failed to file notice of their candidacy by midnight of Friday, May 20; that these persons had fully expected to become candidates and have their names placed on the official ballot by filing the notice required by C. S. 6022; that the others who did file such notices and actually became candidates for these offices have signed a certificate of agreement, giving their consent that the names of those who failed so to file notice of their

candidacy may be placed on the official ballot. Upon this you inquire whether that action may be taken.

I have this morning fully discussed the matter with Judge Biggs, Chairman of the State Board of Elections.

C. S. 6022 requires that notice of candidacy must be filed by person seeking to have his name placed upon the official ballot within the time or times therein set out. Such notice must be filed by the person desiring to become a candidate for member of the House of Representatives and all county offices at least two weeks before the primary is to be held. That time expired at midnight Friday, May 20. The provision of the law on the subject is mandatory. It fixes a time by which the action must be taken or else an attempted filing of candidacy cannot be recognized. There is no provision in the law for waiver of such filing by any other candidate.

We are unable to find any authority in law upon which we can advise you that you may permit the filing of such notice at any time after midnight of Friday, May 20. Neither your Board nor the State Board of Elections can change the statute on the subject. To permit a filing after the time named would, in effect, be a negation or changing of the statute.

I, therefore, advise you that in the opinion of both Judge Biggs and myself, you would not have the right to receive notice of such candidacy after the time set out in the statute, nor to put the name of a person attempting to file such notice upon the official ballot in the primary.

The subject of time within which candidates must file is pretty thoroughly covered in opinion given by this office 29 April, 1930, found on page 237 of the biennial report of the office for 1928-30. I send you copy of that opinion.

CHALLENGES; HOW DETERMINED

2 June, 1932.

You state that a number of persons registered at your precinct as Democrats have been challenged on the ground that they are not members of the Democratic party, do not affiliate with such party, and do not, in good faith, intend to support the candidates nominated in the primary of such party. Notices have been served on the challenged persons. You inquire whether, upon failure of such challenged persons to appear before the Registrar and Judges of Election, at the time and place named for a hearing of the challenge, your Board would then have the right to sustain such challenges, or would it be required to hold the challenge open for hearing on the day of the primary.

By C. S. 6031, it is provided that upon such challenge, "it shall be the duty of the Registrar and Judges of Election, upon such challenge, to determine whether or not the elector has a right to vote in said primary."

In discussing this subject, the Supreme Court, in *Rowland v. Board of Elections*, 184 N. C., 78, said:

But whatever consideration may have brought about the exact provisions of the primary law, it is stipulated in express terms (C. S. 6031), that, when the right of a supposed elector to vote in

the primary of any party is challenged upon the ground that he does not affiliate with such party, or does not in good faith intend to support the candidates nominated in said primary, his qualification and right to vote shall be referred for consideration to the precinct Registrar and Judges of Election.

The Court held that the determination by the Registrar and Judges of Election of a challenge, upon the ground of lack of party affiliation, was final, and not reviewable by the County Board of Elections, or a court. Your Board, therefore, has extensive powers in passing on the challenge, and also in determining your procedure.

If the person challenged on the ground of lack of affiliation with the party of which he claims to be a member, fails to appear at the time and place named for a hearing of the challenge, your Board would have the right to sustain such challenge, or, in your discretion, your Board may hold the challenge open for a hearing and determination on the day of the primary. If the challenged person does so fail to appear at the time and place named, and your Board, composed of the Registrar and Judges of Election, should be of the opinion that the challenge should be sustained it would be within your power and authority so to do, and such action may be indicated by making the entry on the registration book, opposite the name of such challenged person: "Challenge on the ground of lack of party affiliation sustained."

Giving the challenged person an opportunity to be heard before the day of the primary is for the purpose of enabling the Registrar and Judges of Election to hear all pertinent evidence, and to pass on the challenge at such time as would not impede or interfere with the conduct of the primaries. When the challenged person fails to appear in accordance with the notice served on him, the Registrar and Judges of Election have the right at that time to pass on the challenge, since normally they will be engaged in the performance of other duties on the day of the primary.

RESIDENTIAL REQUIREMENTS; PROPER PLACE OF REGISTRATION OF
SCHOOL TEACHER

2 November, 1932.

I understand you want an opinion from me with respect to proper place of registration of a school teacher. Of course, this office cannot pass on the thousands of particular instances of disputed registration. You have no doubt had copy of the pamphlet from the State Board of Elections relating to the election.

The best I can do for you is to lay down certain general principles which may be found in the cases. Two important cases on the subject of "permanent," as distinguished from "temporary" residence, are those of *Roberts v. Cannon*, 20 N. C., 269, and *Hannon v. Grizzard*, 89 N. C., at page 20. I summarize what I have heretofore said on the subject as follows:

One may live a portion, or even a major part, of the time at one place, for a temporary purpose, and still maintain his home or residence at another. Temporary absence from the home or residence does not deprive the citizen

of the right to vote at the place of his residence. A common illustration is that of people working in the departments at Raleigh or Washington and yet retaining their voting residence at some other place in this State or the United States. Where that is the case, the working at the State or National capital, in the government service, may be, and usually is, regarded as a temporary purpose, while such individual retains his voting residence elsewhere.

The case of State on relation of *Gower v. Carter*, reported in 194 N. C., 293, and again in 195 N. C., 697, dealt with the right of school teachers to vote at the place where they were teaching school. With such school teachers, as well as with all others, the problem is to ascertain and determine the permanent residence or home of the person whose right to vote at a particular place is involved.

One may have a temporary residence in a particular town or county for the purpose of teaching school there. She spends her vacations at the place from which she came, with parents or other members of the family. She regards that as her home. She plans to return to that home upon completion of her school duties. Staying at the place at which she teaches is merely for the temporary purpose of performing the duties of her employment. She may spend four months or more in this temporary residence; she does not, however, intend to make that her permanent home or residence. She intends to maintain her permanent home or residence in the town from which she came, and in the home with parents or other members of the family.

In such case, the residence at the place of teaching is for a temporary purpose. She does not establish a voting residence there. The permanent residence is maintained at the home from whence she came. Under such circumstances, she should register and vote at the place of her home, where she intends and does maintain her permanent residence.

The above is usually what happens with respect to school teachers. However, there may be other cases in which the teacher leaves her original home to go into the town in which she teaches, intending to make that town her home or residence. She does not ordinarily go back in vacation to her original home. She intends to, and does, establish a new residence in the town where she is teaching. She usually keeps her personal property at the new place, establishing her home there as a permanent matter. Under such circumstances, when she has lived in the new home or the new place for the required four months, she would have the right to vote there—provided, of course, she has been in the State for one year.

In most of the controverted cases relating to school teachers, it will be found that the place of their legal residence for the purpose of voting is at the home of their parents or other relatives, and not in the town where they are temporarily teaching school.

OPINIONS TO STATE BOARD OF CHARITIES AND PUBLIC WELFARE AND SUPERINTENDENTS OF PUBLIC WELFARE

OFFICE HOLDING; MEMBER COUNTY BOARD OF EDUCATION; SUPERINTENDENT

15 July, 1930.

You state, in an oral conversation, that a member of the Board of Education of one of the counties of the State, has been elected, at a joint meeting of the Boards of Education and County Commissioners of that county, Superintendent of Public Welfare of the county. You inquire what will be the effect of this gentleman's qualifying in the latter office upon his membership in the County Board of Education.

It is entirely clear that membership in a county Board of Education is a public office. It is no less clear that the position of Superintendent of Public Welfare is also a public office.

Section 7 of Article 14 of the Constitution prohibits such double office holding and C. S. section 3201 subjects the person attempting to exercise the functions of two offices to a suit for a penalty of \$200 by any person who may choose to bring such action. If the particular person under discussion, then, should be elected Superintendent of Public Welfare and qualifies by taking oath of office, the effect of this qualification would be to vacate his membership on the Board of Education for the county. If he should thereafter attempt to act as member of the County Board of Education, he would subject himself to the penalty of \$200 and all his acts, as such member, would be void, because he would be, as to that particular office, what the courts call an "usurper" and not an officer *de facto*.

The cases that enunciate these principles are:

Barnhill v. Thompson, 122 N. C., 493.

Midgett v. Gray, 158 N. C., 133.

Whitehead v. Pittman, 165 N. C., 89.

COUNTY POOR—POWERS AND DUTIES OF COUNTY COMMISSIONERS

29 November, 1930.

You request of this office an opinion defining the general duties of Boards of County Commissioners to the poor now in the State of North Carolina, by reason of industrial conditions resulting in unemployment and the consequent positive suffering from lack of proper food and clothing.

In section 7 of Article II of the Constitution, it is declared that beneficent provisions for the poor, the unfortunate and orphans is one of the first duties of a civilized and Christian State. This section of the Constitution, however, is addressed, certainly in the first instance, to the legislative de-

partment of the State Government. That department, in C. S. 1335, has declared:

The Board of Commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and to do everything expedient for their comfort and well ordering.

Section 1336 defines the method by which the Board of County Commissioners shall exercise this beneficent authority as follows:

All persons who become chargeable to any county shall be maintained at the county home for the aged and infirm, or at such place or places as the Board of Commissioners select or agree upon.

The care, then, of indigent and infirm persons, without ability or means to sustain themselves, is thus made a direct charge on the body politic, for its own preservation and protection. The method through which this superior duty shall be performed by the County Board of Commissioners is provided in the above quoted section 1336. The poor, then, are to be maintained at the county home, or at such place or places as the Board of Commissioners select or agree upon.

The condition in North Carolina, at the present time, on account of the unemployment, which is almost universal, is abnormal, to say the least of it. The victims of this condition may be designated as those temporarily poor, yet their poverty and suffering is as real and unavoidable as those permanently infirm or poor. All the agencies of the State may then be invoked and put in action to relieve this situation, as far as may be, under existing statutes, which alone confer authority to act in the premises.

In quite a number of counties, in which this temporary condition exists, there are large towns or cities. Some suggestion has been made that the towns or cities should care for their own indigent, to the exclusion of the participation of the county at all. This view is wholly inadmissible. The poor of a city or town are as much the poor of the county as those located without the territorial limits of such city or town, but within the county itself.

It is noticeable that the poor fund of a county is provided by taxation upon all taxpayers in the county limits. Manifestly, in most instances, a very large proportion of that fund is derived from taxation upon inhabitants of cities or towns. To say, then, that the county commissioners may put aside this obligation, because the town or city, either partially or wholly, undertakes to support its own indigents, is to lose sight of the fact that the duty of the county commissioners is as broad as the territorial limits of the county, and includes all the poor in those limits.

Assuming, then, this duty of the county commissioners, the question is presented: from what fund, as provided in the budget required by the county government law, are these extraordinary expenses to be derived?

The County Fiscal Control Act of 1927, requires, in section 2 thereof, nine funds to be set up in the budget. The first of these is current operating expenses of the county. In levying the tax for this purpose, there is included therein a specific tax for the poor of the county. If the board of

county commissioners, in making the budget, has acted wisely, they have included an emergency estimate for this particular fund, not greater than 5 per cent in excess of the other estimates for the fund.

This office has interpreted this provision, which is found in section 6 of the above cited act, as permitting the county commissioners, in their discretion, to use the 5 per cent emergency fund for any of the objects set up in the current expense fund. Certainly, if the board has followed the act, an emergency now exists, which would justify the county commissioners in resorting to the whole of this 5 per cent appropriation to aid in alleviating the conditions which now confront all governing bodies in the State of North Carolina.

How, then, may the county commissioners utilize this fund in particular cases?

We think the last clause of C. S. section 1336 suggests a solution of this problem. They are not bound to send these temporary sufferers to the county home. They may minister to their wants at such place or places as they may determine. If, therefore, the board is not able to make a lump sum appropriation to the agencies which it selects to administer this emergency fund, then it can, under the statute, administer relief to particular cases upon application to it, which satisfies the board that relief is imperative. This, of course, can be done, whether or not the applicant is a resident of the city or town within the territorial limits of the county.

RULES AND REGULATIONS FOR PRISON CAMPS; HIGHWAY COMMISSION

26 August, 1931.

You request of this department a ruling upon section 28, Chapter 145, Public Laws, regarding the establishment of rules and regulations for Prison Camps, under the control and direction of the State Highway Commission.

In my opinion, these rules and regulations are to be made by the State Highway Commission,—that is to say, originated by the State Highway Commission, and must be approved by both the Governor and the State Board of Charities and Public Welfare before they could be said to be legally adopted.

Referring to the approval of the State Board of Charities and Public Welfare, I understand this to mean that such approval must be given by this Board acting as a Board.

I think it is the purpose of the act to have such rules and regulations established as early as may be and independently of any rules and regulations heretofore existing, in order that uniformity may exist as to the handling of all the prisoners in these camps now put under the control and direction of the State Highway Commission.

This is important, because of the fact that, before the enactment of the present Road Law, except as to prisoners committed to the State Prison, the custody and management of prisoners and Prison Camps has been a matter of county control and the rules and regulations concerning them

have not only lacked uniformity, but they related especially to such county control.

SETTLEMENT COUNTY POOR

8 October, 1931.

The above subject is completely covered by Article 8 of Chapter 24, Consolidated Statutes, and especially by section 1342 in said article.

Answering your questions in order:

1st. In order to gain a legal settlement in the county, must the person residing in the county one year be self-supporting during that year?

No. The person would acquire a settlement, unless he became a subject of county care when he had a settlement elsewhere and was retained in the county only by virtue of section 1343, Consolidated Statutes, until he became well enough to remove to the county of his proper settlement.

2nd. How does a widow establish a settlement? Does she take her husband's settlement or establish one of her own?

This is covered by sub-section 2 of section 1342, C. S. A married woman takes the settlement of her husband and upon his death continues in that settlement, if the husband had any settlement in the State, otherwise the settlement would be that which she herself had at the time of the marriage.

3rd. How does a divorced woman and how does a deserted woman establish a settlement? Do the children of a divorced woman take their father's or mother's settlement? Do the children of a deserted woman take their mother's or father's settlement?

A divorced or deserted woman acquires a settlement just as any other person does,—by a residence of twelve months in the county, however, at the time of the divorce or at the time of the desertion, the settlement of a woman, in either condition, is that of her husband, and continues to be such, if he had any settlement in the county at the time of the divorce or desertion; otherwise, her own at the time of her marriage. Under sub-section 3 of section 1342, the children of a couple who are divorced have the settlement of the father, and in case of mere desertion, the settlement of such child would follow that of the father, if he acquired another settlement in the State; I take it that would be true also, in the case of divorce, if no order had been made with regard to the custody of the child.

4th. How old must a child be to establish his own settlement?

Unless the settlement of the child is controlled by other circumstances,—that is to say, the settlement of parents, his settlement is acquired by residence only, without reference to age.

5th. When a family has moved from place to place many times each year, not remaining in one place long enough to establish a settlement, is the settlement traced back to the man's birthplace? If not, how is a settlement established?

A man's birthplace has nothing to do with his settlement. Under the circumstances you mention, he simply does not establish any settlement.

Probably, however, such a person might have a settlement by reason of the settlement of the parents, which settlement would continue until he had acquired another.

6th. After establishing the settlement of a family through the agency at the place of legal settlement and notifying the agency at the other end, must their consent be gained in order to return a family?

I know of no law regulating the return of indigents to the place of their settlement, unless that settlement be within the State. In that case, the procedure is set out in sections 1335 and 1343, Consolidated Statutes. Section 1343 authorizes the care of any indigent persons in the county where they may be found during the time that they are sick or disabled, and cannot be removed without danger to life. It requires of the county where he was last legally settled to pay all charges.

Section 1335 authorizes the Board of County Commissioners to institute proceedings against any person coming into the county who is likely to become chargeable thereto and cause his removal to the county where he was last legally settled and permits recovery from such county of all charges and expenses incurred for the maintenance or removal. Under this statute, if the county of the legal settlement refuses to accept such person, an action brought by the County Commissioners against such county will lie to compel the county of legal settlement to receive and care for such indigent person.

7th. What is the procedure if a family refuses to return?

The power which the statute gives for the removal of indigent persons is sufficient authority, in a proper case, to employ such means, including physical force, as may be necessary for their removal, this, of course, to be preceded by the procedure set up in section 1335.

SCHOOL LAW; WELFARE LAW; MENTALLY DEFECTIVE SCHOOL CHILDREN

6 January, 1932.

I have carefully read the letter written by Mr. J. B. Hall of date December 24, 1931, with regard to exclusion of mentally defective children from the public schools. The question is raised here as to the amendment to C. S. 5758 by Chapter 453, Public Laws, 1931, which is printed in Michie's Code as the second paragraph of 5758.

The law authorizes exclusion from the schools of children who are mentally defective to the extent which would make it either impossible for the child to profit by instruction given in the school or impracticable for the teacher to properly instruct the normal pupils of the school. In slightly different language, and further on in the chapter, it is provided that under such limitations and rules as the State Board of Education may adopt, such a child may be excluded from the public schools "when it is ascertained that the child cannot benefit by such instruction and its presence becomes a source of disturbance to the rest of the children." The teacher is required to designate such feeble-minded child in her reports to the

County Superintendent of Public Welfare, and, in turn, he is required to report such cases to the State Board of Charities and Public Welfare. Thereupon, an examination is required to be made, under the auspices of the Board of Charities and Public Welfare, into the mental capacity of the child and report thereof made to the county or city superintendent involved. The question here is as to how such examination shall be made and how the costs thereof shall be paid.

I suppose that when the procedure laid down in Chapter 453 has been followed down to the point where such examination is proper, and where parents of the child refuse to permit such examination, the proper course would be to exclude the child from school and put the burden on the parent or guardian to apply to the proper authorities for the re-admission of the child. It is quite probable that the power of the court might be invoked to compel the parents of the child to permit such examination, in cases of this kind. But, as no special machinery is provided in the Act, I am doubtful about this. I feel, however, that upon the refusal of a parent or a guardian to permit examination of the child and upon exclusion of the child from the school, no court or other authority would sustain the proceedings brought to have such child re-admitted to the school, without such an examination and the finding that such child was fit to be re-admitted.

Nothing whatever is said in the Act about the payment of the cost of examination. It is not, so far as I can see, an expense ordinarily included in the budget, but logically, I think it ought to come out of the public school fund, inasmuch as the whole law is included in the chapter on education and is entirely for the benefit of the public schools. Perhaps such cases might be called to the attention of the Board of Equalization and provision for such expenses made there. I cannot tell what the court would say on the question of costs of examination, and you know some defects in the law cannot be cured by interpretation.

INSPECTION OF PRIVATE INSTITUTIONS RECEIVING CHILDREN

16 March, 1932.

We understand from your letter that Miss Florence Boyd of Lenoir, is maintaining a home for crippled children, in which there are ordinarily kept from four to ten children. These children are supported through funds solicited from the public through newspapers, personal appeals before clubs and churches, and, sometimes, by exhibition of the crippled children with case-histories or stories.

I think that this institution comes within the meaning of section 5006, sub-section 4, C. S., and is an institution which your department has both the right and duty to inspect.

I do not think that section 5013, on account of the restriction contained in it, is applicable to this case. However, section 5006 imposes a duty upon the Welfare Department to examine institutions of this kind and there is a reciprocal duty on the part of those who have them in charge to permit such inspection. It is my opinion that if such person should wilfully and ob-

stinately refuse to permit the inspection, which is so required by law, and interferes with the person who has the authority to make the inspection, such person would be guilty of a violation of the law. Of course, if there are violations of law in the way that such institution is carried on, as for instance, by cruelty or neglect from which a child might suffer, the State has its remedy by indictment for that offense; but I do not understand that the State, having provided a law which was evidently intended to prevent occurrences of such a thing, can permit its laws to be frustrated and rendered inoperative until the thing which they were designed to prevent really happens.

I suggest that you bring this view of the matter to the attention of Miss Boyd, so that her side of the matter might receive attention and the situation be handled without unnecessary controversy and unpleasantness.

CHARITABLE INSTITUTIONS; SCHOOL FOR THE DEAF AT MORGANTON AND
SCHOOL FOR BLIND AND DEAF AT RALEIGH

29 June, 1932.

You inquire in your letter of April 27, whether or not provisions of C. S. section 5006, subsection (1), apply to the School for the Deaf at Morganton and the School for the Blind and Deaf at Raleigh. The section referred to is that part of section 5006 which assigns to the State Board of Charities and Public Welfare the power and duty to investigate and supervise, through and by its own members or its agencies or employees, the whole system of the charitable and penal institutions of the State and to recommend such changes and additional provisions as it may deem needful for their economical and efficient administration.

In my opinion, this section does apply to the two institutions named. Section 10 of Article XI of the State Constitution, provides that "The General Assembly may provide that indigent deaf, mute, blind and insane of the State shall be cared for at the charge of the State."

It is true that the State requires that all its charitable institutions shall be made self supporting, insofar as that may be done; nevertheless they are charitable institutions. The State has seen fit to carry out the provisions of the Constitution, with regard to deaf mutes and blind, by the establishment of these schools at Morganton and Raleigh, and the schools are referred to in C. S. Chapter 96, relating to education.

I do not think that this changes their character.

OPINIONS TO STATE'S PRISON

ISSUANCE OF BONDS—PURCHASE OF LAND

11 March, 1931.

Your letter of March 11, in regard to Senate Bill No. 202, received. In my opinion the bill is not a roll call bill.

Chapter 152 of 1927 authorized the issuance of \$400,000 in bonds, the purpose of the expenditure being to acquire land for a farm and for buildings and equipment thereon, to be used as a State Prison. This bill, S. B. No. 202, changes the purpose for which the proceeds of the bonds are to be used. In my opinion, the act of 1927 authorizing the issuance of the bonds remains in force. I am also of opinion that this change in the purpose for which the proceeds of the bonds authorized by the act of 1927 are to be used does not in any way affect the power of the State to issue the bonds under Chapter 152 of 1927. This view seems to be supported by *LeRoy v. Elizabeth City*, 166 N. C., 93. However, as you know, it is necessary to satisfy bond buyers with respect to the validity of bonds issued by the State and they are, therefore, subject to the approval of some bond attorney satisfactory to the buyer of the bonds. These bond attorneys, as Mr. Nash has suggested, are a "law unto themselves." It might, therefore, be well to communicate with Mr. Masslich, or such bond attorney as is expected to pass on the issuance of the bonds under the "Prison Farm Act of 1927," and ascertain from him if he sees any objection to the issuance of the bonds under the act of 1927 with the change in purpose for which the proceeds are to be used, as set out in Senate Bill No. 202.

RIGHT OF JUDGE TO CHANGE SENTENCE DURING SAME TERM OF COURT

5 September, 1931.

Your office presents to me this morning judgment and order of Judge Thomas J. Shaw, entered at August Term, 1931, Superior Court of Columbus County, in case of *State v. John McCollum*.

From the judgment it appears tha the defendant was tried by Judge Midyette at a preceding term of court and prayer for judgment continued to the August term, 1931. When the case was called for disposition, Judge Shaw sentenced the defendant to two years in the State's Prison, and he was delivered to the State's Prison on August 31, during the sitting of the Court.

However, before the adjournment of the Court, Judge Shaw, upon further information, struck out the sentence of two years' imprisonment theretofore imposed at that term, and entered order that the judgment be suspended upon payment of costs.

The Clerk was ordered by Judge Shaw to send transcript of this judgment, containing the change of sentence, to the State Prison authorities so

that the prisoner, John McCollum, might be discharged. This is shown by certificate from Mr. J. L. Memory, Clerk of the Superior Court of Columbus County.

Undoubtedly, the Judge had the right to change the sentence during the term of Court, and having done so, it will be your duty to obey such order and discharge the prisoner.

OPINIONS TO DEPARTMENT OF CONSERVATION AND DEVELOPMENT

STATE EMPLOYEE; NATIONAL GUARD; COMPENSATION

15 August, 1930.

In reference to the claim of Harry W. Inge for pay for the period that he was at Camp Glenn as a National Guardsman, in your letter of August 14, you state the nature of Inge's employment as follows:

Inge has been employed at the Forestry Nursery, near Clayton, N. C., for approximately two years steadily, except for days when the weather would not permit. He was paid for the actual number of hours worked, so that any time lost, due to inclement weather or sickness, was not counted in his time, nor were any holidays given with pay. At the time of his camp period, he was actually employed at the Nursery as a common laborer at 25 cents per hour.

The statute controlling the situation is C. S. section 6869. This is entitled:

"Leaves of Absence for State Officers and Employees" and the section, itself, is in the following words:

All officers and employees of the State who shall be members of the National Guard or Naval Militia, shall be entitled to leave of absence from their respective duties without loss of pay, time or efficiency rating on all days during which they shall be engaged in field or coast defense training, ordered or authorized under the provisions of this chapter.

There can be no doubt that Inge, during a period for which he claims pay, was engaged in field or coast defense training ordered or authorized under the provisions of the law. If he had been regularly employed for the particular work done, at so much per month, he would be entitled to payment of his salary while thus absent from his duties. The difficulty arises from the fact that his pay was measured, not by any period of time, but by the amount of work done by him, with compensation of 25 cents per hour. He was paid nothing at all, if the weather prevented his doing the outdoor labor for which he was employed. He was allowed no holidays and so his compensation ceased in all cases when the work was not actually done. His employment, then, was from hour to hour and not from week to week or month to month. This being true, there seems to be no standard by which his compensation could be measured during the time that he was off on service in the National Guard. His contract was—to receive payment only for actual labor done by him.

We cannot distinguish this case from the case of a painter employed by the State Hospital at Morganton, who was working by the day and paid by the day. On February 1, 1928, we were forced to hold that this painter,

who was a member of the National Guard, did not come within the provisions of section 6869.

Wherever a contract provides that payment should be in accordance with the amount of work done, it seems to us that there can be no standard by which we could fix the amount of pay due the State employee, under such circumstances, when off in the performance of his National Guard duties.

STATE OWNED AUTOMOBILES; CITY LICENSE

18 November, 1930.

Your memorandum of November 17 received. I am of opinion that a town or city does not have the right to require purchase of city license plate for State owned automobiles. I think if the attention of the city authorities is called to reasoning in recent case of *O'Berry, State Treasurer v. Mecklenburg County*, they will agree with the view I am expressing.

HUNTING LICENSE; EXEMPTIONS

4 September, 1931.

The section of the Game Laws, referred to by you in your letter of September 3, the same being C. S. section 2141 (gg), does not require a hunting license from the owner of land or any member of his family under twenty-one years of age to hunt on such land. Also, a party who leases the farm for cultivation is not required to have license to hunt thereon.

In my opinion, both the owner of the land, although he might not live upon it, and the person who leases the land have the right to hunt upon it without taking out license.

As to a share cropper, I do not think that the mere fact that he lives upon the land, which is in the possession of the owner, would give him the right to hunt on the land without license, but if he is himself in the actual possession of the land, he would be considered a lessee and would have the right to hunt on it.

SECTION 2141(gg) C. S., CONSTRUCTION OF STATUTE; MEANING OF TERM "OWNED"; STATE V. FALKNER

14 October, 1931.

You have a letter from Mr. J. Harry Edwards, Game Warden of Vance County, setting up certain facts and asking for an opinion thereon; and this letter you have transmitted to us. Inasmuch as it appears that a case has been constituted in the Recorder's Court, and is there awaiting an opinion from this Department, I think that I had better go into the matter from the lawyer's point of view so that they, too, may thoroughly understand our reasons for coming to the conclusion stated in this letter.

The facts are as follows: Howard Falkner of Vance County has been indicted, and stands for trial before the Recorder of Vance County, for

hunting without a license, off his own premises, at the time he was hunting on a tract of one hundred sixty-four acres, known as the Ned Falkner Estate. In this estate Bessie Falkner, wife of the defendant, owns a one-twelfth undivided interest. There are eight children of Howard and Bessie Falkner. Howard Falkner does not cultivate any of the land. The title to the one-twelfth interest is not in Howard Falkner, but in Bessie Falkner, his wife.

Section 2141(gg) says, in part:

Any person who is a resident of this State, and any dependent member of his family under twenty-one years of age, may take game birds and wild animals in the open season for the same, and not contrary to the provisions of this act, on lands owned by said resident, without a license.

Under this law, and under the facts set out, I do not think that the action can be maintained against Howard Falkner, and for the following reasons:

1. The term "owned" used in the statute is not, as popularly supposed, a word always and necessarily denoting the possession of a legal title. On the contrary, it is a very general term, varying in its significance all the way from ownership of a legal title to the merest interest which justifies rightful occupancy. "The word 'owned' is not a technical term. It is a general expression used to describe a great variety of interests and may vary in significance according to the context and subject matter." *Peterson v. Johnson*, 132 Wis., 280. The opinions of the courts to this effect are numerous and uniform.

I feel sure that if the defendant in this case had any relation to these lands, justifying any sort of occupancy or dominion, he would be an owner in the sense used in this statute, although the legal title may have been in his wife.

2. According to the statement of facts, the defendant was a "*tenant by the curtesy initiate*," which gave him a freehold interest in the lands of his wife. It is true that by virtue of the act of 1848 (C. S. section.....), and the further modification made by the Constitution of 1868, tenancy by the curtesy is stripped of many common law attributes and perhaps his condition is accurately described in *Rouse v. McKeen*, 169 Pa., 116: "The legislative act has lopped off some of the prominent branches; it has not cut down the tree; the mutilated trunk still stands."

Perhaps I had best call attention to *Jackson v. Beard*, 162 N. C., at page 116, in which Justice Walker seems to have held that the husband has now, by reason of these changes in the law, no interest or estate whatever in the lands of his wife. That sweeping statement *arguendo* was not only not necessary to the decision of that case, but is directly contrary to the holding in the three cases cited in its support: *Thompson v. Wiggins*, 109 N. C., 508; *Walker v. Long*, Id., 511; *Johnson v. Coffey*, Id., 515. In fact, when the reasoning in these cases is thoroughly understood, it is seen why the rule that a tenant by the curtesy initiate is considered a freeholder for the purpose of sitting on a jury is not a mere rule of convenience, as suggested by

Rodman, J., in *State v. Ragland*, 75 N. C., 12, but comes from the fact that there is really left with the husband an interest in the wife's land, which in the first mentioned case (*Thompson v. Wiggins*, *supra*, Judge Clark rendering the opinion of the Court) is stated as follows:

The husband is still seized in law of the realty of his wife, shorn of the right to take the rents and the power to lease her lands, and relieved of liability of his interest being sold during the wife's life. By reason of such bare seizin, the husband is still a freeholder and, as such, has always been deemed eligible as a juror in those cases in which being a freeholder is a qualification. He has by the *curtesy initiate*, a freehold interest, but not an estate, in the property.

To the same effect are the other cases cited. In my opinion, in this case Howard Falkner has a freehold interest in the one-twelfth undivided interest of his wife in this land, which includes the right of joint occupancy of the land with her, and in this sense must be considered to have "owned" the land within the meaning of the term as used in this statute, and he is, therefore, not guilty of a violation of the law by hunting thereon without license.

MINOR HUNTING UPON LICENSE OF PARENT OR GUARDIAN, A RESIDENT

20 October, 1931.

Answering your inquiry arising upon the letter of Mr. Jack Saunders of October 17, 1931:

Under section 2141 (gg), being section 30 of the pamphlet Conservation Laws, any person under the age of sixteen years may hunt upon a license of a resident of this State who is his parent or guardian, provided such minor carry the license when so hunting, unless accompanied by the parent or guardian, in which case, he does not have to carry any license, but this section does not apply to minors generally. It is strictly limited to those who are hunting under the license of a parent or guardian.

Any person under sixteen years of age, and not coming within this statute, who hunts without a license, violates the law and is to be dealt with by the Juvenile Court, in the same manner as if found violating other laws of the State.

OPINIONS TO STATE BANKING DEPARTMENT

DEPOSITORS' AGREEMENT; DOUBLE LIABILITY

2 September, 1930.

You have submitted to this office a proposed agreement to be entered into by the depositors of a bank which has been taken over by the Corporation Commission, looking to the reestablishment of the bank, in such way as to save assets which would be destroyed if an attempt to realize upon them was made at the present time. This agreement is drawn under subsection 5, section 218(c) of the Consolidated Statutes.

You state that some of the depositors have feared that if they sign this agreement, it would release in some way the double liability of stockholders to them at the present.

We think this contract would not have this effect. The double liability of stockholders in banks arises out of contract. There is nothing in the proposed agreement which deals specifically with this contract liability. We think its only effect is to postpone the enforcement of the liability to a definite period hereafter, with, of course, the necessary consequence that new creditors of the bank, made after March 15, 1930, in case the scheme to rehabilitate it failed, could also share in the proceeds of this double liability of stockholders, if it was necessary to enforce it hereafter.

BANK HOLDING STOCK IN OTHER BANKS; BANK AND TRUST COMPANY OF HENDERSON, N. C.

25 September, 1931.

Answering your inquiry as to your authority to give permission to the Fidelity Bank of Durham, N. C., to hold stock in another bank, which it claims to have purchased before the act prohibiting such investment had been passed: It seems to me that this is rather a question of policy in administration. You will note that section 220(c) contains an absolute prohibition against a bank making an investment of this kind; and I do not think that the provision contained in that section, which gives you the right to make an extension of time in certain cases, has any application to stock of this sort, but refers, in my opinion, to stock which the bank may legitimately hold, under the proviso in that section.

However, in as much as the bank was holding this stock prior to the enactment of the law, I think it would be the proper thing for your department to fix the limit of time within which the bank would be compelled to sell or dispose of such stock and remove it from the assets of the bank. Perhaps the policy which ought to be pursued in this case, is suggested in the section referred to, wherein will be found a rather drastic provision that where the bank owns legitimate stock above the limit provided, it must sell the

same within six months after its acquisition, or charge it to profit and loss. (This time, of course, is subject to extension by you.)

It occurs to me that it would present quite a complicated problem to the bank examiner, if an investment of this kind were allowed to remain amongst the assets and it might also be attended with considerable danger to a bank. In case of trouble, no one could tell where the unraveling process might end.

SECTION 223(f) C. S., BANKING LAWS; SUBSECTION (c), SERVICES AS TO BANKS
OTHER THAN EXAMINATION, CHARGES

5 October, 1931.

As stated in your letter, section 223(f), Consolidated Statutes, provides, in subsection (a) and subsection (b) the schedule of fees for ordinary examinations of banks, and subsection (c) provides "For services performed for any bank other than examination, the Commissioner of Banks may make such charge as, in his opinion is fair and just."

We quote with approval a paragraph of your letter: "The word 'examination' as used in subsections (a) and (b) above is understood in businesses of banking and auditing to describe a well outlined procedure and the gathering of certain definite information which is compiled in a report of examinations."

I add to that merely that such an examination, the scope and extent of which is established by the rules and regulations of your department, is intended for the purpose of giving necessary information to the banking department as to the condition of banks, by which it may be guided in the matter of supervision and the enforcement of the banking laws and results in reports to the Commissioner of Banks; the services you designate are such as may be specially rendered to the bank itself, independent of this function of examination, and requiring extra time, labor and expert advice. Quoting from your letter, the proposed services would include:

- (a) A more extensive audit.
- (b) A reconciliation of accounts and the elimination of discrepancies
- (c) A modification of the system of accounts in use to provide for a complete and more economical recording of the transactions of the bank.
- (d) A more complete appraisal of the bank's assets and the preparation of a statement of its affairs based thereon.
- (e) Instruction and assistance in the elimination of violations of the laws, rules and regulations laid down for the operation of banks, as well as the elimination of the criticisms shown in the reports of examination, and/or dangerous practices or tendencies in the conduct of the bank's affairs.

The law clearly recognizes that a service of this sort may be provided for over and above that of ordinary examination and equitably provides for payment therefor, not out of the general funds produced by fees for examination but by the bank for which the services are performed.

I think that, under subsection (c) of section 223(f), Consolidated Statutes, you are authorized to perform these services and to charge and collect therefor such sums as seem fair and just.

LIQUIDATION OF BANKS; REPAYMENT STOCKHOLDERS ASSESSMENTS OUT OF SURPLUS ASSETS; MEETING OF STOCKHOLDERS; DELIVERY OF ASSETS TO AGENT

13 October, 1931.

I understand your inquiry to relate to the particular matter as to whether or not the distribution of certain remaining liquidated assets may be made direct to the stockholders, in repayment of assessments made upon them and paid by them, or whether or not such liquidated assets must be paid only to an agent selected in the manner provided in subsection 19. We may compare subsection 13, section 218(c), Consolidated Statutes, and subsection (19), section 218(c), in answering your inquiry of October 16.

The proviso in subsection (13), pertinent to this inquiry, is as follows:

Provided, however, that whenever the expenses of liquidation have been paid and all of the liabilities to depositors and other creditors shall have been discharged, the money then remaining in the hands of the Corporation Commission shall be applied pro rata to the repayment of the amounts paid in by the stockholders.

Subsection 19 provides in detail the manner in which the Commissioner of Banks shall proceed, after all the expenses of liquidation have been paid and each and every depositor of the bank has been paid in full, and provision made for unclaimed and unpaid deposits and disputed claims and deposits; and provides that the Commissioner of Banks shall call a meeting of stockholders, who shall appoint an agent to whom the remaining assets shall be turned over, or, upon certain contingencies, turned over to the Superior Court, all for the benefit of such stockholders.

I think subsection (19) is intended to completely clear the Banking Department of any further duty and liability with reference to the liquidation, after claims have been paid or provided for, and to put the expense and burden of further liquidation on the stockholders, for whose benefit it is made; the State thus being relieved of the expense of working out, at its expense, the difficulties brought on by the bank itself, inasmuch as any remaining activities of the department would inure to the benefit of the stockholders, and in my opinion, this is all that the lawmaking body had in view in this section.

I think, too, that the phraseology employed in subsection (19), shows that it has special reference to such assets as remain unliquidated. Subsection (19) constantly employs the term "assets." Subsection (13) uses the word "money." Of course, "money" is "assets"; but subsection (19) proceeds with the idea that the remaining assets shall be reduced to cash.

I think the whole section being administrative in character, takes up and sets out the order of procedure which is expected to be followed, and when it mentions application of the money, or the repayment thereof to the stockholders, it means this to be done by the Commissioner of Banks.

Prior to the amendment to the banking laws, in which this section occurred, it had been held that assessments for stock liability could not be made until it appeared that they were necessary—that is to say, they could not be made, unless it could be shown that assets were insufficient to pay in full. The law now provides that such assessments may be made in anticipation of a deficiency of assets. While the fund so paid in is not technically a trust fund, I think it partakes of that character sufficiently to justify a construction of this proviso, which would cause its repayment *pro rata* by the same hand that collected it, when there is money left for the purpose.

I can see no reason why this money should be paid over to the agent provided for in subsection (19), and I think it is the duty of the Commissioner of Banks, under the given circumstances, to make it direct to the stockholders, and that there is no necessity for calling the meeting provided for in subsection (19) before such payment is made.

LIABILITY OF NATIONAL BANKS TO PRIVILEGE TAX; FIDUCIARY AND
TRUST BUSINESS

15 December, 1931.

I understand that most of the national banks in this State undertaking to do a fiduciary or trust business have paid the \$200 annual privilege tax required by C. S. Section 6377, under the 1931 amendment, but one, at least, has protested payment of this tax—first, on the ground that it does not wish to exercise the privilege of acting as a fiduciary without bond, and second, because it claims that a national bank cannot be taxed by the State under any circumstances in the absence of an act of Congress permitting the same.

As to the first contention, it has been held by this Department, on what I consider proper construction of the statute, that the tax is laid, not for the privilege of acting as fiduciary without bond, but for the privilege of engaging in the fiduciary and trust business at all, without any distinction as to giving or not giving a bond. It is not necessary to repeat here an opinion already in your files.

The question, then, recurs to a consideration of the second contention: that is, that a national bank cannot be taxed by a State except under some Federal statute permitting it.

The immunity of national banks from taxation by the State and its municipalities does not arise, of course, from the fact that such a bank is a United States corporation, but from the fact that it has been considered a governmental agency, exercising some function in connection with the national currency. The business of acting as fiduciary, or in administration and guardianship, and the handling of trust estates, is not a necessary part of banking, however desirable as a profitable business and one likely to boost deposits. The combination has not escaped criticism in both directions by bankers and publicists. Without taking sides in that matter, I merely say that when you come to consider that fiduciaries, in the administration of estates, are clothed with powers and duties of such an intimate nature

that these powers have been either derived wholly from the State or have been subject to complete legislative and court control from time immemorial, we can readily see that the Legislature has the power to deny such a privilege to any corporation, to forbid the unauthorized exercise of such powers, or to limit such activities to corporations created under its own laws. Can the State, then, charge a privilege tax for engaging in a business which it has an unquestioned right to forbid?

I do not think the Federal government means to organize banking corporations in this State and permit them, in open violation and defiance of the State law, willy-nilly to engage in business not at all connected with the exercise of any governmental function, crash the gates of the probate courts, deal in the administration of estates, and do so on a basis of unfair competition with the State banks, and pay no reasonable tax for the privilege. The act of Congress under which national banks applying for permission are permitted to act as trustee, administrator, etc. (act of December 23, 1913, Subsection k) makes special reference to the State or local law under which such powers are to be exercised, and recognizes the fact that they would only be permitted to act in such capacity when permitted by the State law.

These national banks, insofar as their fiduciary and trust business is concerned, are open to examination by the State Banking Commission. Considering the nature of this business and the intimate connection which the courts of the State have with it, it would be difficult to say how any sort of system could be justified that did not permit such examination.

Referring again to C. S. 6377, we find that the \$200 license fee paid to the Banking Commission is "for the use of the Commissioner of Banks in the supervision of banks acting in a fiduciary capacity." It is really a part of a fund used to pay the expenses of such examination. We think the national bank liable to the tax on every principle of fairness and as a matter of law.

I would suggest that you take this matter up with the Comptroller of the Currency or other responsible Federal department, in order that an amicable adjustment may be made of the matter, and that future policy may be assured.

COMMISSIONER OF BANKS; PLEDGING ASSETS OF BANK

9 March, 1932.

I have thoroughly examined the text of "An Act to provide emergency financing facilities for financial institutions, to aid in financing agriculture, commerce, and industry, and for other purposes," and, in connection therewith, the letter of Mr. G. R. Cooksey, Secretary of the Reconstruction Finance Corporation of date February 24, 1932.

Under the Banking Laws of this State, I am of opinion that you, as Commissioner of Banks, will have authority to pledge the assets of any bank, in your hands for liquidation, for the purpose of securing a loan, as provided in the above mentioned act of Congress, which is to be used for the purposes therein specified, when such loan is approved and such

authority given you by an order of Court in the particular proceeding signed by the resident Judge of the district in which the bank may be located, or the regular judge holding the terms of the Superior Court of the county in which the bank is located.

By the expression "particular proceeding," in the preceding paragraph, I refer to the fact that when you take into your possession, or have taken into your possession, a particular bank for liquidation, and having filed the notice required under the Banking Laws with the Clerk of the Superior Court of the county in which the bank is located, an action is thereby instituted, although no summons is issued, which partakes of the nature of a regular action in the Superior Court. In such proceeding, the general nature of your powers, as Commissioner of Banks, and the approval and order of the court in the particular matter, is amply sufficient to sustain your authority for obtaining and securing the loan and executing whatever document may be necessary in the premises.

COST BOND IN PROSECUTION

15 April, 1932.

Your letter of April 14 received.

The Commissioner of Banks being a State officer is not, in my opinion, required to give prosecution bond in actions brought by him, when acting under the statute in liquidation of closed State banks. The proper procedure will be when the summons is issued to ask the clerk to write across the face of the form of the bond: "Plaintiff acting as a State agency is not required to give a prosecution bond."

Of course, all costs and fees chargeable against the Commissioner of Banks in any of these suits should be paid. It is usually well to pay these costs and fees as they accrue, but if it be more convenient to pay at more regular intervals, I think officers should perform the services and await payment of the fee.

BANKS; AMENDMENT OF CHARTER; CHANGE OF NAME

23 May, 1932.

The chapter in Consolidated Statutes on "Banks," makes no specific provision as to the manner in which the charter may be amended; and section 1131 of the chapter on "Corporations" seems to confine its provisions to corporations which might be created under the provisions of that chapter. This section provides for amendments, and change of name is one of them. However, section 221(a) of the chapter on banking, in giving certain specific powers to banks, seems also to confer upon them all powers, (those which are appropriate, of course), which have been conferred on private corporations. In my judgment, the provisions of section 1131 must be complied with by a bank wishing to change its name, and when the procedure therein set out is carried into effect, such amendment will be effectual.

You will note however, that where a bank is originally established, the Secretary of State is required to transmit to the Commissioner of Banks a

copy of the certificate of incorporation, and is not allowed to issue the same until authorized so to do by the Commissioner of Banks. (C. S. 217(b) and C. S. 217(d)).

In my judgment, the proposed amendment by which the name is changed should be submitted to the Secretary of State, and by him to you, in accordance with the procedure laid down in these two sections.

OPINIONS TO STATE INSTITUTIONS

UNIVERSITY; TUITION; WHEN IS A STUDENT NONRESIDENT

5 December, 1930.

In your letter of December 2, you state that the rule of the University is that nonresidents of North Carolina shall pay for tuition an additional fee of \$25.00 per quarter. You ask this office to give you the criteria for judging when a student is a resident of North Carolina, or when he is not a resident of North Carolina.

We think that if we determine where the particular student has his domicile, we should determine whether or not he is a nonresident. Our own court, in *Horne v. Horne*, 31 N. C., 99, has defined the term "domicile" thus:

The term "domicile," in its ordinary and familiar use, means a place where the person lives, or has his home; in a large sense, it is where he has his true, fixed and permanent home to which, when absent from it, he intends to return, and from which he has no present purpose to remove.

All things, then, must concur to constitute a domicile—first, residence, and, second, the intention to make it a home—the fact and the intent.

It is true that domicile and residence are not always synonymous, because a person may have more than one residence at the same time, but he can never have more than one domicile. The use of the term "residence" thus, however, is rather objective, in the sense that it means location, while the term "domicile" is more or less subjective, in that it is dependent upon one's mental attitude toward it. For instance, a person having his domicile in North Carolina might, for his health or otherwise, rent and occupy a cottage at some health resort in another State during the summer season, simply for a temporary purpose. Looking at it from the standpoint of his location, he is a resident of that health resort, but he is, from that fact, no less a North Carolinian because he maintains his domicile, as herein-before defined, in the State of North Carolina. Certainly, the son of this man could not be, under the rule, deemed a nonresident of the State of North Carolina.

There are three kinds of domicile—domicile of origin, domicile of choice and domicile by operation of law. The domicile of origin defines itself. It is, stated broadly, that every person must have a domicile somewhere. When, then, he gives up his domicile of origin and obtains another, in the sense of making that other his home, this becomes a domicile of choice. A domicile by operation of law arises, sometimes, when the person does not fix a domicile for himself. The law, then, steps in and fixes one for him, in accordance with the facts and circumstances of the case. Again, and this is only the part that is particularly pertinent, the domicile of a minor child is that of his parent, unless that child has been emancipated

by the parent and has acquired a domicile for himself. If, therefore, a young man under twenty-one years of age, whose father or parent or guardian is a resident of another State, in the sense that he has his permanent home in that State, presents himself to be entered as a student at the University, he is a nonresident within the meaning of the word. If he is beyond the age of twenty-one and comes from a permanent home in another State, he is, also, a nonresident within the rule. If, however, he has removed to North Carolina, with the intent to make North Carolina his permanent home, he being over twenty-one and legally competent to exercise the choice, he becomes a resident of North Carolina within the rule, regardless of whether he has resided in the State for the full period of twelve months, necessary to make him a voter in North Carolina.

This statement may not cover every case that is presented to you, but the general principles included in the statement can be, no doubt, applied to the facts of a particular case, in such way as to arrive at a satisfactory conclusion in the premises.

OLEOMARGARINE; ACTS PREVENTING COLORING IN IMITATION OF BUTTER

17 February, 1931.

You request of this office an opinion as to whether or not an act prepared by you regulating the manufacture, sale and merchandise of oleomargarine is constitutional, particularly section 2 thereof. Section 2 is as follows:

It shall be unlawful to sell, offer for sale, or merchandise in any manner whatsoever oleomargarine which is of a yellow color in imitation or semblance of butter as defined in section 3 of this act.

There are quite a number of decisions of the Supreme Court of the United States that hold that an act similar to this, even in relation to oleomargarine brought into the State in interstate commerce, is constitutional.

Powell v. Pa., 127 U. S., 678.

Schollanberger v. Pa., 171 U. S., 1.

Plumly v. Mass., 155 U. S., 461.

Capital City Dairy Co. v. Ohio, 183 U. S., 238.

It is true that some of these decisions hold that the sale of oleomargarine itself in original packages cannot be prohibited by the State because it is interstate commerce. If, however, to prevent fraud upon the citizens of the State the act does not prohibit the sale but regulates it by requiring that it shall not be colored in imitation or simulation of butter, that act would apply to oleomargarine brought into the State contrary to the act, even though it was in interstate commerce.

ESCAPE FROM CASWELL TRAINING SCHOOL—RETURN OF INMATE

8 June, 1931.

In telephone conversation this morning, you asked me as to your right to call on sheriff to return inmate of Caswell Training School escaping therefrom. The law on the subject is as contained in C. S. 6175, which is as follows:

Any superintendent may notify the sheriff within whose county any person sent from his hospital on probation, or escaped therefrom, may be found, and thereupon it shall be the duty of such sheriff forthwith to take such person and return him to such hospital at the expense of the county of the settlement of the patient. This section shall apply in cases of escape from Caswell Training School.

You will thus see that the section was made applicable to escapes from the Caswell Training School by amendment in Chapter 114, Public Laws of 1927. Under the specific language of this statute, you have the right to call on the sheriff of the county where the person escaped may be to return such person to your Institution, and this is to be done at the expense of the county of the settlement of the patient.

OPINIONS TO MEMBERS OF GENERAL ASSEMBLY

GENERAL ASSEMBLY; POWER OF HOUSE TO REMOVE READING CLERK

21 January, 1931.

You ask my opinion as to whether the House of Representatives has the power and authority to remove Mr. ——— from his position and office as Reading Clerk of the House of Representatives.

So far as I am able to ascertain, this question has not heretofore arisen in this State. However, we have authority on the subject from other legislative bodies.

The Constitution, Article II, section 18, provides: "The House of Representatives shall choose their own Speaker and other officers." A provision similar to and sometimes identical in language is found in the Federal and other Constitutions.

Generally speaking, the power of appointment to office carries with it the power of removal in some form or by some process. *Myers v. United States*, 272 U. S., 52, 47 Sup. Ct. Rep., 21, 71, L. ed., 160.

In Speakership of the House of Representatives, 11 L. R. A., 241, the Colorado Supreme Court held that the House of Representatives of that State had the power, by a vote of a majority of the whole number of members elected, to remove the Speaker from office, and to elect another in his stead. In the body of the opinion that Court said:

The common parliamentary law as existed in this country at the time of the adoption of our Constitution provided that the Speaker might be removed at the will and pleasure of the House; and such law, not having been repealed or superseded by any constitutional or statutory enactment, still exists as an adequate provision for the removal of the Speaker in conformity with said section.

The Constitution of Iowa, Article III, section 7, provides that "each House shall choose its own officers." In *Cliff v. Parsons*, 57 N. W., 599, the Supreme Court of Iowa held that the power to appoint a Secretary of the Senate is exclusively in each Senate, which may remove him at any time without notice or hearing.

In Cushing, "Law and Practice of Legislative Assemblies," section 299, it is said:

The presiding officer, being freely elected by the members, by reason of the confidence which they have in him, is removed by them, at their pleasure, in the same manner, whenever, he becomes permanently unable, by reason of sickness, or otherwise, to discharge the duties of his place, and does not resign his office; or, whenever he has, in any manner, or for any cause forfeited or lost the confidence upon the strength of which he was elected."

This section is quoted with approval by our Court in *Scarborough v. Robinson*, 81 N. C., at page 422. The authority of a legislative body to remove

officers is there discussed as springing from the inherent right of such body to enforce its authority, maintain its essential prerogatives, and use the means necessary for such purpose.

The same author, Cushing, in his "Law and Practice of Legislative Assemblies," in section 283, page 109, says:

But, in whatever way the officers of a legislative assembly may be appointed, they may be removed by a simple resolution to that effect.

I deem it unnecessary to pursue the matter further. Unquestionably, the House of Representatives has the right to remove its Reading Clerk, and that may be done by the adoption of a simple resolution to that effect.

COUNTY ACCOUNTANT AND COUNTY AUDITOR—NO ADDITIONAL COMPENSATION

29 January, 1931.

You request of this office an opinion as to whether or not a county auditor, existing at the time of the enactment of chapter 146, Public Laws 1927, is entitled, under section 3 thereof, to additional compensation for the duties imposed upon him as county accountant, under that section.

We think not. It is expressly declared in said section 3:

In lieu of appointing a county accountant in counties in which there is an auditor, the board *shall* impose and confer upon the county auditor all the powers and duties herein imposed and conferred upon county accountants.

Nowhere in section 3, or any other part of chapter 146, is there any additional compensation provided for an auditor who has imposed upon him the duties of county accountant, under section 3.

In counties where there is no existing county auditor, the board of county commissioners is authorized to impose all the powers and duties of county accountant upon *any county officer*, except the sheriff or tax collector or county treasurer. If, acting under this latter condition, the duties of a county accountant are conferred upon any officer of the county, then the board is authorized to adjust the salary of such officer, in order that adequate compensation may be paid to him for the duties of his office. It is evident, we think, that the latter class only may have additional compensation.

MUNICIPAL COURTS; ESTABLISHMENT BY SPECIAL ACT FORBIDDEN. CONS.

ART. II, SEC. 29

25 February, 1931.

You have submitted to us a bill entitled "An act to amend the charter of the town of Bessemer City and create and establish a municipal court of the town of Bessemer City and Crowder's Mountain Township in Gaston County, and to prescribe the jurisdiction and proceedings of said court."

The title of this bill well describes its contents. It seems that the draftsman of the bill temporarily lost sight of the limitations upon the power of the General Assembly contained in section 29 of Article II of the Constitution. The first clause of this section reads as follows:

The General Assembly shall not pass any local, private or special act or resolution relating to the establishment of courts inferior to the superior court.

This is certainly a local, and probably a private act. Its very title brings it within the condemnation of section 29.

We suggest that constitutional difficulties may possibly be avoided by treating the recorder's court as created by Chapter 30 of the Private Laws of 1913 as existing, and the whole of the act to be devoted to enlarging that jurisdiction, both in substance and if necessary, in territory. We think that a bill so drawn would not offend against section 29, because it would not relate to the establishment of a court, but would deal with a court already established.

POWERS OF GOVERNOR WITH REFERENCE TO FINANCES AND SALARIES

3 March, 1931.

In accordance with your request of yesterday, I undertake to set forth the powers of the Governor of this State, and especially with reference to its finances and the salaries of employees.

By Constitution, Article III, section 1, "the supreme executive power of the State" is vested in the Governor. By section 7 of said article, it is directed that he "shall take care that the laws be faithfully executed."

By C. S. 7636, "he is to supervise the official conduct of all executive and ministerial officers," and "to see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedy as the law allows." In *Russell v. Ayer*, 120 N. C., 180, it was held that the Governor had the right to bring mandamus proceedings against the State Auditor to compel the performance of ministerial duties.

Since 1925, the State has been operating upon an executive budget. The original acts on the subject will be found in Chapters 89 and 230, Public Laws of 1925, and a rewriting of them covering the subject with greater explicitness in Chapter 100 of the Public Laws of 1929. That last is the act under which the State now operates and in accordance with which the Governor exercises full control over all the financial operations and expenditures of the State. On page 348 of the biennial report of this Department for 1924-26 will be found an opinion of this office reviewing the whole subject and setting out generally the powers of the Governor with respect to the executive budget.

The basic meaning of the executive budget system is control by the Executive of expenditures by spending agencies of appropriations made to them by the legislative body. The more significant parts of our Executive Budget Act, Chapter 100, Public Laws of 1929, are sections 5, 8, 19, 23, 24, 26 and 29. With rare exceptions, the act clothes the Governor with absolute

and complete control over the expenditure of all appropriations made by the General Assembly.

The fact that an appropriation is made by the General Assembly does not mean that the particular department, institution or agency can spend the money thus appropriated to it. Under the Executive Budget Act, it is the first duty of the Governor to see that during a biennium total expenditures do not exceed current revenues. To that end, he can make a horizontal cut in all appropriations or he can control expenditures under the power given him to approve or disapprove allotments from the appropriation to the department, institution or agency.

Under the act, each department, institution or agency submits to the clerkly allotment out of the appropriation made by the General Assembly Budget Bureau—of which the Governor is the head—a request for a quarter to it. Upon this request, the Budget Bureau makes such allotment to the department, institution or agency as such Bureau may approve for expenditure during the quarter. The Auditor is forbidden to issue, and the Treasurer to pay, any warrant except in accordance with the allotment and not in excess of its total. Thus, expenditures are subject to control by the Governor through the Budget Bureau. Wastefulness or extravagance in expenditure or employment of too many subordinates by any department, institution or agency may, by this means, be controlled and prevented by the Governor. This is really the heart of the executive budget system.

Under the Salary and Wage Commission Act, Chapter 125, Public Laws of 1925, the Governor can exercise absolute control, subject to certain rare exceptions since created by statute, over the salary of every subordinate in every department, institution and agency of the State. Under that act, in 1925 a Salary and Wage Commission, composed of Messrs. Julian Price, chairman, Robt. N. Page, Geo. A. Holderness, Frank P. Tate and P. H. Hanes, with the then Pardon Commissioner, Hon. Hoyle Sink, acting as Executive Secretary, made a survey of all the State Departments established a salary schedule for all subordinates, and fixed and established rules and regulations with respect to hours of work, sick leave, holidays, etc. The report of the Commission went into effect upon approval of it by the Governor. While the act gave the Salary and Wage Commission power to fix the salaries of the State departments and agencies, which would include all of its institutions, the Commission did not undertake to fix salaries except in the State departments.

By section 6 of the act, the Governor has the power at any time to reassemble the Commission, or such others as he may appoint in their place, so that they may reconsider and readjust the classification of salaries theretofore made. Full power and authority exists to change all such salaries of such subordinates at any time.

Summarizing, then, it will be seen that the Governor, through the Executive Budget Act of 1929 and the Salary and Wage Commission Act of 1925, can control the financial operations of the State departments, institutions and agencies in the following respects:

- (a) Keep State expenditures within current revenues;

- (b) Increase or diminish expenditures within the limits of the appropriations to such department, institution or agency;
- (c) Eliminate any employees he deems unnecessary;
- (d) Prevent any expenditures which he deems unnecessary or extravagant; and
- (e) Fix the salaries of subordinate employees.

TAXATION—DELEGATION OF LEGISLATIVE POWER

9 March, 1931.

You submit to me form of amendment to your bill for the selected commodity sales tax, the general purport and effect of which is to make the rates of gross sales vary with the amount collected under the commodity sales tax. You inquire whether this can constitutionally be done.

Our Constitution, Article I, section 8, provides that "the legislative, executive and supreme judicial powers of the government ought to be forever separate and distinct from each other." The legislative power is conferred upon the General Assembly, and that body is charged, both in the Constitution and from the very nature of our institutions, with the duty and power of levying taxes. Would a provision of the nature you suggest be a violation of the Constitution as being delegation of legislative power?

This general question of the delegation of legislative power, especially with respect to the distribution of judicial power in courts inferior to the Supreme Court, is discussed in *Provision Co. v. Daves*, 190 N. C., 7. There the Court quotes with approval from *Fields v. Clark*, 140 U. S., 649:

The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend.

The same general statement, with further discussion, is found in 8 Cyc., 830. There is also a further general discussion of the whole subject in 12 C. J., 839. It is there stated that the General Assembly cannot delegate its power to fix the tax rate. Of course, under our Constitution and system of government, the power to fix necessary tax rates and to levy taxes is conferred upon boards of county commissioners, as they are the legislative bodies for the counties.

We have in our own statutes many illustrations of the imposition of taxes, the amount of which is made contingent on some undetermined or extraneous fact. In Schedule B of the Revenue Act, the rate of the tax is in many instances made to depend upon the population of a town at the last Federal census, the number of rooms in a hotel, the number of plumbers employed by a particular proprietor, the number of seats at a restaurant table, etc.

In some States the amount of taxes imposed upon a foreign corporation for domestication purposes is made dependent upon the amount of such charges imposed by the State of origin of such foreign corporation. Some

courts have held this to be a delegation of legislative power, but the weight of authority is to the contrary. In *People v. Philadelphia Fire Asso.*, 92 N. Y., 311, the Court reasoned upon the matter in this wise:

That is certain which can be rendered certain, and the act fixes the tax by reference to the extrinsic fact which determines its amount in excess of the fixed and established rule. Because that extrinsic fact is the legislation of another State, it does not follow that the legislative discretion of such other State is in any manner substituted for our own.

Upon an examination of the authorities which I have been able to make in the short space of time available for the purpose, I have reached the conclusion that the act can be so drafted in accordance with your views so as to avoid the idea that it contains a delegation of legislative authority.

MOTOR VEHICLES—STATE AND MUNICIPALLY OWNED; LEGEND ON CAR;
POLICE CAR; EXCEPTION

8 April, 1931.

You present to me House Bill No. 198, passed at the 1931 session of the General Assembly, and ask my opinion on certain phases of its application. The act by amendment makes Chapter 239, Public Laws of 1925, applicable to cities and incorporated towns. That act of 1925 prohibits the use of public owned automobiles for private purposes, and requires certain identifying marks on such public owned automobiles.

Soon after that act was passed, this Department wrote several letters interpreting it. We held that it would be a compliance with the statute to paint the required legend on a plate to be fastened securely to the car. That ruling then given would, of course, apply to the new act extending Chapter 239 to cities and incorporated towns.

There must be on the car a statement, with letters of not less than three inches in height, that such car belongs to the State, county, some institution or agency of the State, or a particular town or city. In addition to that, there must be on the car the legend, "For official use only."

Chapter 239 of 1925 was amended by Chapter 303 of 1929, the amendment adding the following at the end of section 4:

Provided, however, that no automobile used by an officer or official in any county of the State for the purpose of transporting, apprehending or arresting persons charged with violations of the laws of the State of North Carolina shall be required to be so lettered.

This is, therefore, now a part of Chapter 239 of 1925, which was amended by House Bill No. 198 at this session of the General Assembly. It follows, therefore, that the act of 1931 would not apply to cars used by police of cities and towns for the purposes indicated in the amendment made by Chapter 303 of 1929.

ROLL CALL BILLS, AMENDMENTS AND SUBSTITUTES; SEVERAL READINGS

1 May, 1931.

The two cases in which you are interested are:

Brown v. Commissioners, 173 N. C., 598.

Edwards v. Commissioners, 183 N. C., 58.

In *Brown v. Commissioners*, it was held:

The record shows that the original bill, H. B. 711, passed first reading in the House of Representatives on 22nd January and was referred to Judiciary Committee. On 1st of February the committee reported a substitute with a slightly different caption, under legislative practice took the number of the original bill and was placed on the calendar. On the 6th and 21st days of February it passed second and third readings by yeas and nays vote duly entered on the journal.

The substitute was only an amendment to the original bill, which had already passed first reading on January 22. Consequently, when the substitute passed second and third readings on different days and the yeas and nays were duly entered on both said readings, the requirements of Art. II, section 14 of the Constitution were duly complied with.

In *Edwards v. Commissioners*, counsel for plaintiff presented the point for decision, as follows:

The second point in the case is whether the bill amending Chapter 220 of the Public Local Laws of 1913 received its several readings as required by Article 2, section 14 of the Constitution. The original bill received an unfavorable report and was tabled; it reported a substitute which was adopted and passed its second reading on the same day. The introduction of a bill is its first reading. The bill introduced was tabled. Then the adoption of the substitute was its first reading, and then its second reading on the same day renders it invalid, and nullifies its tax levying power.

The Court, Adams, Judge, a unanimous decision, met this point in this way:

This bill (H. B. 92) was introduced in the House of Representatives on January 16, 1919, and referred to the appropriate committee; and on February 19 the committee reported the bill unfavorably, and recommended the adoption of a substitute. On February 20, H. B. 92 was reached on the calendar, and "the substitute was adopted and the bill passed its second reading." On the day following "the substitute for H. B. 92 passed its third reading." On each reading the yeas and nays were entered in the journal. The bill or substitute was then sent to the Senate and passed by that body in conformity with the constitutional requirements; and on March 3 it was signed by the presiding officer of each house. It may now be observed that the plaintiff's specific and dominant objection is that when H. B. 92 was tabled, the substitute became an entirely new bill; that the adoption of the substitute was its first reading, and that the first and the second reading of the new bill occurred on the same day. We need not travel abroad in search of precedent to show that this position cannot be sustained. In *Brown v. Commissioners*, 173 N. C., 599 it appears that the bill which was there under discussion passed the

first reading in the House of Representatives, and was referred to a committee who reported a substitute for the original measure. Brown, J., said: "The substitute was only an amendment to the original bill, which had already passed first reading on January 22. Consequently, when the substitute passed second and third readings on different days and the ayes and noes were duly entered on both said readings the requirements of Article II, section 14 of the Constitution were duly complied with." And in 25 R. C. L., 880, it is said, "Even a substitute bill which is so germane to the original bill as to be a proper substitute need not be read three times."

OFFICE HOLDING; MEMBERSHIP ON HIGHWAY COMMISSION AND BOARD OF
DIRECTORS, N. C. SCHOOL FOR DEAF

5 May, 1931.

You state that you have recently been appointed a member of the State Highway Commission. You are at the present time, and for some years have been, a member of the Board of Directors of the North Carolina School for the Deaf at Morganton.

Membership in the State Highway Commission is clearly a public office. Membership on the Board of the School for the Deaf is also a public office. The first is not a commissioner for a special purpose and the second does not constitute a commissioner of a public charity. The Supreme Court of North Carolina dealt with this situation in several cases in 68 N. C., particularly *Welker v. Bledsoe*, page 457.

Neither one of these positions, then, would bring you within the exception of section 7 of Article XIV of the Constitution. That exception declares: "That nothing herein contained shall extend to officers of the militia, justices of the peace, commissioners of public charities or commissioners for special purposes." The Legislature itself has dealt with the School for the Deaf and classed it as an educational institution. A member of the Board of Directors of that Institution could not be a commissioner of public charities. A commissioner for a special purpose is appointed with limited and temporary duties, and the official position, of course, has its limit in the performance of those temporary duties. A member of the State Highway Commission does not come within this class.

We, therefore, advise that you resign at once from the Board of Directors of the School for the Deaf at Morganton if you intend to qualify as Highway Commissioner.

MISCELLANEOUS OPINIONS

MEMBER OF BOARD DEALING WITH BOARD

21 July, 1930.

You state that recently the Board of Commissioners of Wake County, acting under section 12 of Chapter 91, Public Laws of 1927, undertook to elect one of its members purchasing agent and fix the salary of such person at a definite sum. The action of the board in so providing for purchasing agent under said section, and selection of the particular person, was by vote of three members, one of whom was the person so selected as such purchasing agent. You ask my opinion as to whether, under the law, such action by a board of county commissioners is legal, or would be violative of any statute.

C. S. Sections 4388 and 4390 generally declare the action of a public board in making a contract with one of its members as being a misdemeanor. Section 12 of the County Government Act of 1927 authorizes the board of county commisisoners "to designate some competent person, either a member of the board or some other officer or agent of the county, as purchasing agent." The section does not authorize the board to employ one of its members for such purpose and fix a salary or other compensation for him. Its meaning is that the duties of purchasing agent may be assigned to some member of the board or other officer of the county.

I am of opinion, then, that the board would not have the right to elect one of its members purchasing agent and pay him a salary for the service. Nor should it do so upon the vote of the member so selected. The board could, by action of the other members, assign these duties to one of its members, but without salary or compensation other than that fixed for the services of such person as a member of the board of county commissioners.

ACCOUNTANTS; EXPERIENCE REQUISITE FOR EXAMINATION

25 October 1930.

Among other provisions, section 11 (5), Chapter 261, Public Laws of 1925—an Act to regulate the profession of public accountancy—sets out that examination shall be given to one who "shall have had at least two years' experience or its equivalent next preceding the date of his application on the field staff of a certified public accountant." You ask me whether the expression therein, "its equivalent," means that the experience so obtained, which would be equal to the two years' experience, must be on the field staff of a certified public accountant.

No. A settled rule in the construction of statutes is that significance must be given to all language used, if possible. Apparently, the expression, "its equivalent," would be meaningless if the requirement with respect to such experience so expressed must be "on the field staff of a certified public

accountant." The Board, therefore, may admit to the examination those persons who have had sufficient experience, whether on the field staff of a certified public accountant or otherwise, which in its considered judgment is the equivalent of two years' experience on such staff.

The expression, "its equivalent," in a subsequent clause in the same subsection, relating to experience of one after graduating from a recognized school of accountancy, has, of course, the same significance.

LEVY AND COLLECTION OF TAXES—SALE OF PERSONALTY

29 January, 1931.

Today you submit various inquiries to me with respect to levy and collection of taxes and sale of personalty and realty for such purpose.

The tax lien on realty attaches, C. S. 7991, when the tax list is endorsed by the authorities and put in the hands of the sheriff. A lien on personalty is acquired from levy.

It is your duty to exhaust the personalty first for taxes, C. S. 8006. Under C. S. 8008, where a mortgage is given upon personalty after the tax list reaches your hands, all the personalty is liable for all the taxes of the particular taxpayer, if you make levy on such mortgaged personalty within sixty days after the mortgage.

You are also interested with respect to rights between mortgages of personalty and mortgages of real estate. In such case, you can only sell the mortgaged personalty, except as permitted under C. S. 8008, for the taxes on such mortgaged personalty. This is governed by 8006, and by the case of *Chemical Company v. Williamson*, 191 N. C., 481, construing that section. Under such circumstances—that is, where there is a mortgage to one party on personalty and to another on realty—you should levy and sell a sufficient part of the personalty to pay the taxes against it and then sell the real estate for the taxes against it.

Of course, where you can find personalty of a taxpayer against which there is no mortgage, you can sell any or all of that for all the taxes of such taxpayer. Or, under C. S. 8008, you can sell all of the personalty mortgaged after the tax list reached your hands for all the taxes, if you levy on it within sixty days after such mortgage.

EMBEZZLEMENT; VARIOUS APPLICATIONS OF STATUTES

27 February, 1931.

Replying to yours of February 26. In your letter, you present to this office two questions, which we state hereinafter with the answer appended:

- (1) Where a commissioner is appointed to sell lands and fails, upon demand to pay over the money collected by him to those entitled, is he guilty of embezzlement, as defined in our statute, C. S. 4268?

It is very clear that he is not. He is not exercising a public trust or holding a public office, nor is he any agent of any person. He is simply an

officer of the court appointing him commissioner. If, therefore, he converts the money to his own use, which he collects as commissioner, he has been guilty of contempt of court and he can be forced to disgorge, by setting in force the power of the court to punish him for the contempt.

(2) Where a trustee in a deed of trust sells land and fails to make a settlement and converts the proceeds of such sale to his own use, is he guilty of embezzlement?

The answer to this depends upon the scope of the term "agent," used in the statute. We think it is not broad enough to cover such a trustee. You will find in *State v. Connelly*, 104 N. C., 794, a discussion of the statute, as it was up to that period—1889, and the reasons why the statute was so often amended appear in that decision. In *State v. Barton*, 125 N. C., 702, it was held that a contractor was not an agent, employee or servant of the person for whom he was working. In *State v. Keith*, 126 N. C., 1114, it was held that neither a lessor or a lessee of a farming lease was an agent or servant within the meaning of the statute.

You will find an older decision in *Fessenden v. Jones*, 52 N. C., 14, which holds that a guardian is not an agent of the ward.

The United States Supreme Court, in *Taylor v. Mayo*, 110 U. S., 330, 28 L. Ed., 163, held distinctly that a trustee was not an agent, the court saying: "An agent represents and acts for his principal, who may be either a natural or artificial person. A trustee may be defined generally as a person in whom some estate, interest or power in or affecting property is vested for the benefit of another. When an agent contracts in the name of his principal, the principal contracts and is bound, but the agent is not. When a trustee contracts, as such, unless he is bound, no one is bound, for he has no principal. The trust estate cannot promise; the contract is, therefore, the personal undertaking of the trustee.

These cases all emphasize the difference between the relation of a trustee and a *cestui que trust* and that of principal and agent.

We think, therefore, that the statute would have to be amended to make it apply to a trustee, as the terms used in it now would have to be strained beyond their legitimate meaning to cover the case of such trustee.

See, 2d C. J., page 425.

SUFFRAGE; PROPERTY QUALIFICATION UNCONSTITUTIONAL

25 June, 1931.

Your letter of June 23 received. You seek to incorporate certain territory into a town and to provide in the petition and order creating the town that in all elections for creating an indebtedness in the town only free-holders shall be permitted to participate. You inquire whether such a provision would be constitutional.

No. Constitution, Article I, section 22, is as follows:

As political rights and privileges are not dependent upon, or modified by, property, therefore no property qualification ought to affect the right to vote or hold office.

Article VI of the Constitution deals with suffrage and eligibility to office, and prescribes the qualifications of electors. You will note that section 1 provides that persons twenty-one years of age, and possessing the qualifications set out in the article, "shall be entitled to vote at any election by the people in the State." No property qualification is included among those thus set out.

You will find that this principle that there shall be no property qualification with respect to the right to vote runs through all expressions of the Constitution on the subject. In Article VII, Section 7, limiting the power of a county, city or town to contract an indebtedness, the vote thereon when submitted is to be "of a majority of the qualified voters therein."

These constitutional provisions clearly prevent the inclusion of such a provision in the charter of a town.

MUNICIPALITIES; PETITION FOR RECALL; WITHDRAWAL OF NAMES

1 July, 1931.

Your city charter provides in Article XI, Chapter 59, Private Laws of 1913, which is similar to C. S. 2885, proceedings for recall of elective officers. The petition must be signed by electors equal in number to at least twenty-five per cent of the entire vote for all candidates for the office of mayor cast in the last preceding general election. When the petition, with its signatures, is presented, it must be examined and passed upon by the City Clerk and it becomes his duty to ascertain and determine whether it is signed by the requisite number of qualified electors. The City Clerk has ten days from the date of the filing of the petition within which to make his examination and certificate. If he shall determine that the petition is insufficient, it may be amended within ten days from the date of such determination, and if so, he makes a like examination of the amended petition.

The question arises as to whether persons who have signed the petition for a recall and election thereon have the right to withdraw their names from such petition, and if so, at what time.

My attention has been called to, and I have been able to find, only one case which directly holds that petitioners do not have the right of withdrawal at some time before the matter has been passed on.

In *Beecham v. City Clerk* (Calif.), 168 Pac., 1058, the Court held that petitioners did not have the right to withdraw their names from the petition after it had been presented to the clerk for his consideration.

The great weight of authority is to the effect that petitioners generally have the right to withdraw from petitions prior to determination of the question presented by the official or body clothed with authority to act thereon. It was so held in *Dutton v. Village of Hanover*, 42 Ohio St., 215, with respect to a petition for an election on the question of surrendering the municipal powers of the village.

In *LaLonde v. Board of Supervisors* (Wis.), 49 N. W., 960, it was held that persons might withdraw their names from a petition for an election

for the removal of a county-seat pending the investigation by the board as to its sufficiency.

In *People ex rel. Irwin v. Sawyer*, 52 N. Y., 296, it was held that petitioners might withdraw their names from a bond petition prior to final submission of the case to a county judge who was charged with the duty of passing on it, and upon such withdrawal, the name of such person and his taxable property should be excluded from the calculation on the part of the applicants. In this case the Court said:

It was not necessary that the statute should give the right to withdraw. This right the law gives petitioners, unless prohibited by the statute.

In *Davis v. Henderson* (Ky), 104 S. W., 1009, it was held that persons might withdraw their names from a petition for a local option election at any time before it was acted upon by the county judge to whom, under the law, it was to be submitted.

In *Hay v. Dorn*, City Clerk (Kan.), 144 Pac., 235, it was held that signers might withdraw their names from a petition and revoke their action in signing it at any time before it was acted upon. This case went so far as to hold that such withdrawal might be made during the ten days when petitioners were permitted to amend their petition after it had been found to be insufficient.

In *Territory v. Mayor and City Council of Roswell* (N. M.), 117 Pac., 846, it was held that persons might withdraw from a petition for the establishment of a commission form of government prior to action upon it.

In *Littell v. Board of Supervisors* (Ill.), 65 N. E., 78, the Court sustained the right of signers to withdraw their names from a petition asking for the creation of a new town, at any time before the board charged with passing on the matter took final action.

The leading of the later cases on the subject seems to be *Rominger v. Nello*, County Auditor (Wash.), 167 Pac., 57. This case was decided August, 1917. It arose out of a petition for the recall of a county commissioner. The Court held that electors could withdraw their names from the petition prior to final determination of the petition's sufficiency.

As stated, the City Clerk has ten days in which to pass on the sufficiency of the petition for the recall of an elective officer of the City of Raleigh. During the time that he is considering the petition in an effort to ascertain whether it is in compliance with the statute and carries the requisite number of signatures, any signer has the right to withdraw his name therefrom. When such withdrawal takes place, the name of such person should not then be counted as one of the signers of said petition.

As stated, the weight of authority from all the Courts, with the exception of that of California, sustains this conclusion.

SITUS FOR TAXATION OF PROPERTY OWNED BY NONRESIDENT; MATERIAL CONSIGNED
TO BE PROCESSED, LIABILITY FOR TAX; WHEN IN TRANSIT;
INTERSTATE COMMERCE

18 July, 1931.

I doubt whether your inquiry discloses sufficient data for a serviceable opinion, but I will answer you in a way which may solve your problem.

A foreign corporation ships material to a North Carolina Corporation, located in Gaston County, to be processed and returned, title to the material remaining at all times in the foreign corporation.

Upon the facts stated I think that the situs of the property is the place at which it is held by the domestic corporation for processing, and that it is therefore subject to the taxes, county and other, applicable to personal property so located.

This property could hardly be considered in transit under *Guano Co. v. Biddle*, 158 N. C., 212. There *Kelly v. Rhoads*, 188 U. S. 1, is quoted: "... property actually in transit is exempt from local taxation, although if it be stored for an indefinite time during such transit, at least for other than natural causes or lack of facilities for immediate transportation, it may be lawfully assessed by the local authorities."

It does not appear from your letter that there was, under the transportation agreement with the carrier, a stoppage in transit for the purpose of processing, the transportation to be resumed under the original agreement, but the contrary. At any rate it is doubtful whether this would affect the case.

PREPAYMENT OF TAXES—DISCOUNTS

23 July, 1931.

Your letter of July 20 received. Under Section 805(8) of Chapter 428, Public Laws of 1931, a taxpayer, for the pre-payment of taxes between July 1 and October 1 of any year, is entitled to discounts as therein set out, 3 per cent on or before July 1, 2½ per cent on or before August 1, 2 per cent on or before September 1, 1½ per cent on or before October 1. The taxes referred to in this Subsection are those payable either to the county or a town, since it provides for the prepayment to the county or town tax collecting authority.

The discounts and penalties provided for in Subsections (1) to (7) of Section 805 relate by express language to county taxes. The discount of ½ of 1 per cent in Subsection (2) is with respect to county taxes paid after the first day of November and on or before the first day of December. These county taxes are due and payable on the first day of October; therefore, Subsection (1) relates to the discount permissible for payment on the first day of October and on or before the first day of November.

It will thus be seen that upon a proper construction of the act, the person who makes the pre-payment of taxes between July 1 and October 1 of any year under Subsection (8) of 805 would not be entitled to the discount allowed by that Subsection and also to the discounts allowed by Subsections (1) and (2).

While Subsections (1) to (7) of 805 do not directly relate to discounts and penalties for town taxes, yet under Chapter 183, Public Laws of 1925, provision is made whereby the governing body of a city or town may allow the same discounts and impose the same penalties as are allowed and imposed with respect to county taxes under those Subsections.

HISTORICAL COMMISSION—ANCIENT DOCUMENTS AND RECORDS

24 September, 1931.

You are engaged in the collection of ancient documents and records pertaining to North Carolina history. You ask me for my opinion as to the authority of counties, towns and public officials to turn over such documents to you.

The statute on the subject is II C. S. 6145:

Preservation of documents; copies furnished. Any state, county, town, or other public official in custody of public documents is hereby authorized and empowered in his discretion to turn over to the commission for preservation any official books, records, documents, original papers, newspaper files, printed books or portraits, not in current use in his office, and the commission shall provide for their permanent preservation, and when so surrendered copies therefrom shall be made and certified under the seal of the commission upon application of any person, which certification shall have the same force and effect as if made by the officer originally in charge of them, and the commission shall charge for such copies the same fees as such officer is by law allowed to charge, to be collected in advance.

By II C. S. 6142 it is made the duty of the Historical Commission to collect historical data of this nature. Public officials charged with the custody of these documents and records, not in current use, are authorized and empowered in their discretion to turn them over to the Commission. The statutes, of course, have reference to the old marriage bonds, records of the county courts of pleas and quarter sessions, both of which ceased at the adoption of the Constitution of 1868; and also to settlements of estates and the older wills.

The Historical Commission has done invaluable work in collecting this material, (in many cases greatly damaged) and restoring it by expert treatment, in binding and indexing it, and thus making it available to the people of the State and the country generally. The Commission gives official receipts for all such documents, books, etc. so that public record can be made in the counties from which they come.

Permit me to express my personal appreciation of the invaluable work this Commission is doing, and the hope that it will receive full coöperation from all officials in charge of these documents.

EXEMPTION OF VETERAN FROM POLL TAX

19 October, 1931.

Referring to our letter of October 15, 1931, we wish to say that Chapter 193, Public Laws 1931, deals with this subject. In that act, it is provided

an honorably discharged veteran of any of the wars of the United States, now a resident of this State and subject to capitation or poll tax therein, and who has received injury in the line of duty in the military service, whether compensable or not, and all such honorably discharged veterans that have been or now are receiving compensation from the Federal Government for disability of service connected origin, shall be conclusively considered and presumed as having physical infirmities sufficient to warrant exemption from poll tax.

The tax applies, however, to those who served not less than ninety days between April 6, 1917 and November 11, 1918, and all those of such veterans who served with the United States forces in Russia between April 6, 1917 and April 1, 1920.

Such claim of exemption must be made to the Board of County Commissioners and proof of injury and service must be made by producing the discharge or release, or certificate of service or injury, signed by a recognized official of the United States War Department, or the Adjutant General's Office of this State. Such certificate is to be recorded with the Register of Deeds of the county prior to tax listing day, and it is the duty of the Register of Deeds to notify the Board of Commissioners of such registration. The application of the veteran may then be filed and the Board of County Commissioners is required to allow the exemption.

CAPITATION TAX—STATE AND COUNTY PROPORTION

5 November, 1931.

In response to your recent request through Mr. Smith, I have to say that Constitution, Article V, Section 2 is as follows:

Sec. 2. APPLICATION OF PROCEEDS OF STATE AND COUNTY CAPITATION TAX.

The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter purpose.

The county poll tax is limited to \$2.00, by Constitution, Article V, Section 1.

Section 492 of Chapter 427, Public Laws 1931, clearly contemplates that \$1.50 of the poll tax shall be applied to educational purposes and remitted to the State Treasurer as a part of the State School fund. It necessarily follows that the remaining portion of the poll tax, or 50 cents thereof, shall be retained by each county and applied to the support of the poor.

POSSESSION AND SALE OF SO-CALLED "WINE BRICK"

15 December, 1931.

Numerous inquiries like yours have come to this Department with regard to the legality of the possession and sale of the so-called "wine brick," now

appearing commercially under different trade names, but of substantially the same material and character, and accompanied with similar literature. Perhaps the exact content of these "wine bricks" varies in character according to the manufacture, but they are all based upon the pressed pulp of grapes; perhaps there is included in some of them certain ingredients which might facilitate the process of fermentation, or produce a certain type of product.

There is no question about the fact that they may be used in the quick manufacture of wine, and that, because of their content, they are peculiarly adapted to this purpose; that a beverage highly intoxicant and containing much over the prohibited percentage of alcohol may be quickly produced by a novice in the art, by observing the instructions and disregarding the warnings frequently pointed out that the process of nature can be stayed only by active interference, say, for example, keeping the mixture at freezing point; otherwise, the possessor of the brick and of the solution made therefrom may find himself in possession of a beverage with too much "kick" to meet the approval of the League for Law Enforcement.

The attention of this Department has been called to such a "wine brick," with printed matter on the carton or cover, in which directions are given for treating the juice; the addition of a certain amount of sugar for "dry types," and a certain other amount for "sweet types." The mixer of this concoction is then directed to pour it into a glass jug or demijohn. He must be careful to insert a loose bunch of cotton in the neck of the jug, "to keep out foreign substances," and he is warned that unless the stuff is kept under a temperature of 32° Fahrenheit, fermentation will result; in which case, the gas created from fermentation may escape through this cotton, and not cause pressure in the jug.

Accompanying this merchandise, in fact, printed upon it, may be found a "reorder" form, on which he may order bricks producing beverages of various kinds, such as port, champagne, sauterne, claret, etc.

In considering the legality of the possession and sale of this merchandise, we must observe that the prohibition laws of the State of North Carolina, particularly the Turlington Act, are much more comprehensive in their application than the laws of the United States, as contained in the Volstead Act, and I am considering the question only as it may be affected by our State laws.

Consolidated Statutes, 3411(d):

ADVERTISING, etc., OF UTENSILS, etc., FOR USE IN MANUFACTURING LIQUOR. It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula, direction, or receipt advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. It shall be unlawful to have or possess any liquor or property designated for the manufacture of liquor intended for use in violating this article, or which has been so used, and no property rights shall exist in any such liquor or property.

With regard to the householder, in whose possession such merchandise may be found, whether he is guilty or innocent would depend, I think, upon

his intention in the matter—that is, so far as the mere possession is concerned; but if he follows the suggestions in the printed matter accompanying the merchandise, and mixes the ingredients, so as to produce therefrom a beverage of too high alcoholic content, whether of “port, sherry, champagne,” or other type, if he “processes” the manufacture, I think he would be guilty of a violation of the law. It is true that matters have been pre-conditioned to such an extent that his participation in the manufacture is reduced to the simplest possible extent. He is advised to pour in a little water, add a little sugar, put the mixture in a jug, with a safety valve of cotton, and “let nature take its course.” He may then sit down in watchful waiting, without the fear of having his family or visitors disturbed by the noise of exploding home brew in the cellar. But nature can be very much encouraged—in fact, aided and abetted—by bringing together elements which never would have fallen into accidental combination in a million years, and for this, at least, he is responsible.

I think it very clear, however, that the possession, sale and traffic in this “wine brick,” or this character of merchandise, is a violation of the above quoted Section of the Consolidated Statutes.

Referring again to the statement that merchandise of this kind, or so-called “wine bricks,” may differ in content, unquestionably many of them are so predisposed and combined as to greatly facilitate the fermentation, which might happen in any event with a perfectly innocent mixture. But other considerations lead to the conclusion that the traffic is illegal; they come from the printed matter with which the merchandise is accompanied. Taken together, this printed matter may well be considered “formula, direction, receipt” and advertisement which the statute denounces, and the material to which it refers comes under the same bans. This printed matter forms an advertisement of considerable appeal, making it rather clear that by following the instructions, simple as they are, the purchaser may produce wine of an attractive type and satisfactory alcoholic content.

We need not go into the historic background to realize how thin is the veil of innocence attempted to be thrown over this industry. At best, it is only a device, and in considering its legality, it is hardly necessary to refer to a provision in the Turlington Act, C. S. 3411(b): “All the provisions of this article shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.”

In my opinion the possession and sale of the “wine brick,” in the manner herein described, is unlawful.

PRACTICE OF ARCHITECTURE; ADVERTISING AND “HOLDING OUT” AS AN ARCHITECT

21 December, 1931.

I have carefully considered your communication of November 7, together with the letter of Messrs. Brooks, Parker, Smith & Wharton accompanying the same, and I undertake to give you my opinion in the matter. You state the case as follows:

There is a growing practice in this State of persons who are not registered architects furnishing designing and drafting services for

a fee to clients, and signing themselves "Architectural Designer" or "Building Designer," or similar titles. They do not use just the word "Architect," and their claim is that under the provisions of "An act to regulate the practice of architecture and creating a board of examination and registration of same," which was ratified March 11, 1919, they can perform this service of designing and drafting, and charge for the same, so long as they do not use the word "Architect."

The conclusion at which I arrive is not exactly that which was reached by Mr. Parker in this case. As you will likely wish to submit this to your attorney, I am departing from our usual custom and giving you my opinion at some length, together with some citations from authorities and illustrations, which I consider pertinent.

The amendment, ratified March 11, 1919, bears no particular relation to the subject of your inquiry, but Section 4 of Chapter 270, Public Laws 1915, (the original act regulating the practice of architecture) which directly bears upon your inquiry, reads as follows:

"Sec. 4. Any person not registered under this act who shall advertise or put up a sign or card or other device, or in any other way hold himself out to the public as an architect, shall be guilty of a misdemeanor and punished by a fine of not exceeding fifty dollars (\$50). *Provided*, however, that nothing herein shall prevent any person from making plans or data for buildings for themselves or other persons, if the person so furnishing such plans or data shall not hold himself out as an architect," etc.

Many chapters have been written into the law during recent years, with the apparent purpose of dignifying some occupation into a profession by giving it an exclusive status, and of protecting those who are engaged in it. They usually define "practice," require examinations by a board, and the issuing of a certificate or license to the successful applicant. Unlicensed practice of the profession or occupation is then forbidden, under pain of law. The law we are considering is unique amongst them on account of the absence of several features common to these acts.

No statute could add dignity to the practice of architecture, already one of the noblest, as well as one of the most ancient, of all the professions. It is classed with sculpture, painting, music and poetry, in the group of the five greater arts, known as "The Fine Arts." It yields to none of them in its usefulness, its visual expression of beauty and majesty. It is, perhaps, the most honored of them all, because it creates the most enduring and the most awe-inspiring monuments of civilization, but it is also a trade, and this statute is supposed to regulate it and protect those who engage in it.

We notice that the statute does not directly forbid the practice of architecture by an unlicensed person, or rather by a person who has not passed the board. Even Section eight, which applies to persons who have not registered certificates after having obtained them, is practically of the same effect as Section four. We may, therefore, eliminate that phase of the matter, and I think we need not consider any inference as to "holding out" which might otherwise be drawn from the fact itself of such practice. We are left to consider whether or not a person, by the use of such terms

as "Architectural Designer," "Building Designer," advertises or "holds himself out" as an architect, in violation of this statute.

The word "design" (v) is defined in Webster's Dictionary as follows: (2) "To draw the preliminary outline or main features of; to sketch for a pattern or model; to delineate; to trace out; to draw"; and the word "design" (n) is defined: (1) "A preliminary sketch; an outline or pattern of the main features of something to be executed, as of a picture, a decoration, or a building; a delineation; plan."

Referring now to the cases in which the term "architect" has been defined by the courts, we cite a few: "One who makes plans and specifications for a building and superintends its construction," *Payne v. DeVane*, 77 Cal. App., 399 (quoting Webster's Dictionary); "An architect is one who makes it his occupation to form or devise plans or designs and to draw up specifications for buildings or structures, and to superintend their construction," *People ex rel Laist v. Lower*, 251 Ill., 527; "An architect is a person 'skilled' in the art of building; one who understands architecture or makes it his occupation to form plans and designs of buildings and to superintend the artificers employed," *Wilson and Edwards v. Greenville*, 65 S. C., 426.

The statute, Section 9, defines architecture as being: "For the purpose of this act, architecture is defined to be the art of designing for the safe and sanitary construction of buildings for public and private use, as taught by the various colleges of architecture recognized by the American Institute of Architects."

Architecture is, therefore, regarded by this law as the subject of a distinct branch of study, as requiring training, much theoretical knowledge as well as skill and artistic ability, of a standard fixed by the profession, the subject of approval by high authority; in fact, a specific board.

I cannot see that in the use of the terms "Architectural Designer" and "Building Designer" any claim is made to such superior attainments or that the user of these terms can be held to "hold himself out" as an architect. He is not an architect according to the accepted definitions of that word, or, in my judgment, according to the popular conception of the profession.

Perhaps the Court may have to give a more restricted meaning to the term as used in this act, in order to apply it with any certainty. The Illinois statute, reviewed in *People ex rel. Laist*, *supra*, is similar in wording to the North Carolina statute, but it makes the practice of architecture, without a certificate, a misdemeanor, and is easily applied. In the North Carolina statute it is probable that the Court will hold that, reading the statute generally, it forbids a person holding himself out as a *licensed* architect, which would align this law with others of like character, and which is probably just what it means.

I can readily understand the anxiety of the Board about the enforcement of this law, because the principle of protection in it is so narrow, depending on the good judgment of the public in preferring to do business with a regular, rather than an irregular, practitioner. Perhaps that is as far as the legislature was willing to go; and considering the inconvenience to the public which might have followed a stricter law, we cannot say that the limit was not a wise one. At any rate, the fact that a person chooses a less

skilled person for the job does not show that he does not understand the difference between an architect and a carpenter. It is oftener out of compassion for his pocket book.

Returning to the proviso, one who "makes plans" is a "designer," according to the foregoing definition, and I think the terms "Architectural Designer" and "Building Designer" are descriptive of that work. Again, the act permits any person to make plans and data for other persons. There is no restriction that his service shall be casual. He may do these things when he pleases, and as often as he pleases. I think with the right to do the work goes the right to describe it in apt English.

In my opinion, the use of the terms "Architectural Designer" and "Building Designer," to describe such business, is not a violation of this statute.

SHERIFF'S COMMISSIONS; NONE ON CERTIFICATE OF LAND SALES WHERE THE
COUNTY IS PURCHASER

6 January, 1932.

C. S. 8049, dealing with the manner of settlement by the sheriff for the county taxes, provides that he shall be charged with the sums appearing by the tax list as due for the county taxes, but shall be allowed to deduct therefrom, as prescribed by law in regard to settlement of State taxes, (see C. S. 8042), taxes of insolvents, uncollectible poll taxes, and the amount of county tax on the lands bid off by the county, and certain costs and fees specified in the section.

Section 8042, which is the Section providing for fixing the time and providing the manner of settlement by the sheriff of State taxes, fixes the commissions of the sheriff, not only for the collection of State taxes, but for "county, township, school district or other purposes whatsoever." It is 5 per cent on all sums up to \$50,000, and 2½ per cent on all sums in excess thereof; and further provision is made for commission on taxes collected under Schedule "B."

The sheriffs are allowed fees covering every phase of the process of the sale of land for taxes. (See C. S. 8009.)

It cannot be said that the sale of land for taxes, at which sale the county becomes the purchaser and receives the certificate, is in any sense a collection of the taxes, even under the old system. The county which purchased lands at a tax sale, acquired only a lien in the nature of a mortgage for the taxes, which lien had to be foreclosed. Under the present tax foreclosure proceeding, the sale of the land for taxes and the issuing of a certificate therefor by the sheriff has become a very small part of the actual collection of the taxes, in fact, only the beginning. For his services in connection with this sale, the sheriff is, as we have already seen, compensated. You will note, in Section 8049, (dealing with the manner of settlement for county taxes), the amount of county tax on lands bid off by the county is classified with insolvents and uncollectible poll taxes, which together form the amount to be deducted from the sums for which the sheriff is liable.

I think this classification and this manner of dealing with such certificates is conclusive that the sheriff is not entitled to commission on amounts represented by certificates of land sales where the county is the purchaser.

POSTPONEMENT OF SALE OF LAND FOR DELINQUENT TAXES; 1931

29 March, 1932.

In accordance with our telephone conversation, I have considered the various statutes to which you referred, Chapters 342 and 160 of 1931, C. S. 1334.48 and C. S. 8012.

In a letter of 31 August, 1931 to Mr. C. M. Johnson, Director of Local Government (dealing primarily with another, but related, subject), I said:

It will be observed that this Chapter 342 limits the postponement of sale of land for delinquent taxes, as therein permitted, to such sales for the year 1931.

A further examination of the chapter this morning confirms the view then expressed. You will note that the postponement authorized was to "not later than the first Monday in November, 1931." All references in the act are to taxes and procedure with respect to the tax year, 1931. Section 2 also seems to be conclusive "that this act shall apply only to such taxes as are now due and unpaid."

Chapter 160 has no relation to your inquiry, neither does C. S. 8012, as carried forward in Michie's North Carolina Code of 1931.

Sale of land for taxes for this year is governed by C. S. 1334.48, or Chapter 213, Public Laws of 1927, as amended. This statute, still in force, sets out the duties of the sheriff with respect to report of taxes collected and order of commissioners for sale of land, the sale to take place on the first Monday in June.

NOTARIES PUBLIC MUST USE SEAL IN PROOFS OR ACKNOWLEDGMENTS; JUSTICE OF PEACE CAN USE SCROLL

1 April, 1932.

Your telegram just received. A justice of the peace may use a scroll as a seal in this State. Quite likely your reference is to acknowledgments or proofs before justices of the peace, rather than notaries public.

A notary public should have and use an official seal. C. S. 3197:

Official acts by notaries public shall be attested by their notarial seals.

Under C. S. 3305, the Clerk of the Superior Court passes on all certificates of acknowledgments and proofs, and orders them to registration. In *Peele v. Corey*, 196, N. C., 83, it appeared that the Clerk had certified the due execution of the instrument "as appears from foregoing seals and certificates." The acknowledgment taken before a notary public was not attested by his seal. The Court sustained the validity of the instrument and its registration apparently upon the theory that the Clerk of the Superior Court had passed

on and judicially determined correctness of proof or acknowledgment of the instrument.

If the papers to which you refer were acknowledged or proven before notaries public without the official seal, the notary may affix his seal at any time before registration, or affix it afterwards and have the instrument registered anew.

Regardless of the case of *Peele v. Corey* referred to above, it is certainly the part of wisdom to have any acknowledgments or proofs before notaries public attested by their official seals.

POSTPONEMENT OF SALE OF LAND FOR DELINQUENT TAXES; MUNICIPALITIES

8 April, 1932.

Your letter of April 5 received. With respect to postponement of sale of land for delinquent taxes by counties, I send you herewith copy of my letter of March 29 to Mr. B. L. Fentress, County Attorney of Guilford County.

With respect to municipalities, Chapter 296, Public Laws of 1931, amended the Local Government Act (Chapter 60, Public Laws of 1931) in the following respects:

All cities and towns shall be subject to the provisions of chapter two hundred thirteen of the Public Laws of one thousand nine hundred twenty-seven, as amended. Except as the context may otherwise show, and for the purpose of applying the provisions of said act to cities and towns, the following words and phrases in said act shall be deemed to have the following meanings when applied to cities and towns, viz.; "county commissioners" shall mean the governing body of a municipality; "county" shall mean a municipality; "township" shall mean taxing district; "county-town" shall mean the municipality.

And again, by the same amendment:

In applying the provisions of Section four of said Chapter two hundred thirteen to cities and towns, duties required to be performed on the first Monday in May shall be deemed duties to be performed on the second Monday in May and duties required to be performed on the first Monday in June shall be deemed duties required to be performed on the second Monday in June.

These amendments as quoted apply to municipalities the provisions of Chapter 213, Public Laws of 1927, as amended, to sale of land for delinquent taxes. By these amendments the town tax collector is required on the second Monday in May to make report in full to the governing body of the municipality of uncollected taxes for the current tax year.

The governing body of the municipality shall thereupon order sale of all land for taxes where the taxes have not been paid, the said sale to take place on the second Monday in June.

SALE OF REAL ESTATE FOR DELINQUENT TAXES—GENERAL ASSEMBLY VALIDATING

21 April, 1932.

Your telegram received. Undoubtedly, the General Assembly of 1933 can pass an act confirming and validating all sales of real estate for delinquent taxes held and conducted this year on some date other than that fixed by statute. Chapter 160, Public Laws of 1931, is such an act passed by the last General Assembly with relation to such sales made in 1930 on dates other than those fixed by the statute.

TAX LIENS; FORECLOSURE BY COUNTY; REMEDY

22 June, 1932.

The question in your recent letter may be succinctly stated as follows: Does present C. S. 8037, as amended, provide an exclusive remedy for the foreclosure of tax liens by a county, or may the county, in addition to the remedy therein provided, proceed under C. S. 7990?

In *New Hanover County v. Whiteman*, 190 N. C., 332, the Court held that the county might proceed under C. S. 8037 to foreclose the tax sale certificate, or it might foreclose its original tax lien under C. S. 7990. This opinion was rendered 21 October, 1925, and, therefore, prior to the tax foreclosure act, Chapter 221, Public Laws of 1927. The act of 1927 repealed certain sections of the Consolidated Statutes as therein set forth, and rewrote and re-enacted Section 8037. That and other Sections pertaining to the sale and foreclosure of land for taxes were amended by the General Assemblies of 1929 and 1931.

We have no case from the Supreme Court directly passing on the question you raise. The following, however, are cases dealing with these foreclosure statutes:

Hines v. Williams, 198 N. C., 420—decided March 5, 1930.

Orange Co. v. Jenkins, 200 N. C., 202—decided January 27, 1931.

Shales Products Co. v. Cement Co., 200 N. C., 226—decided January 27, 1931.

Kirkman v. Stokes, 201 N. C., 9—decided May 20, 1931.

Orange Co. v. Wilson, 202 N. C., 424—decided March 23, 1932.

The reasoning and language in *Shales Products Co. v. Cement Co.*, 200 N. C., 226, are favorable to the view that C. S. 7990 is still in force and applicable in the foreclosure of the original tax lien. The reasoning and the result in *Orange Co. v. Wilson*, 202 N. C., 424, support the other view—that is, that the recent tax foreclosure acts are exclusive on the subject.

Upon a consideration of all these cases, I am of opinion that the better view is that the Supreme Court would hold that C. S. 7990 is still in force, and the county may, under that statute, proceed to foreclose its original tax liens as decided in the *New Hanover* case prior to the foreclosure act of 1927 and amendments thereto. Of course, I cannot be sure of this in advance of an opinion from the Supreme Court. Studying all of the opinions together, the drift of the reasoning in the cases would seem generally to be

toward, and in support of, the view that C. S. 7990 is still in force and available for foreclosure of the original tax lien, when the suit is brought by a county or other municipal corporation under its provisions, as was done in the New Hanover case.

You will, of course, understand that the views I here express cannot be a ruling or official opinion of this office, binding upon or protective to any public official. Frankly, I think it would be well to constitute a case so as to have this matter passed upon and determined by the Supreme Court. This suggestion was heretofore made by the Department through Mr. Nash, but as stated above, I am unable to find that any case has come to the Supreme Court positively determinative of the question submitted.

TAXATION—SALE OF LAND; NO PENALTY OR INTEREST BETWEEN JUNE 2 AND
DATE OF SALE

27 September, 1932.

Your letter of September 23 received. Section 805 of the Machinery Act of 1931 provides for penalties for delayed payment of taxes, the highest rate applicable being that of 4 per cent where payment is made after the first day of May or on or before the first day of June. No provision is made for the imposition of such penalty on account of delayed payment after the first day of June. This is so, no doubt, because by Section 4, Chapter 213, Public Laws of 1927, county commissioners are directed to order sale of land for taxes on the first Monday in May, the sale to take place on the first Monday in June.

The penalty of 4 per cent, then, applies to all taxes paid after the first day of May.

Chapter 342, Public Laws of 1931, authorizes postponement of sale of land for non-payment of taxes to the first Monday in November, 1931, limiting such postponement to such taxes as were then due and unpaid. This act was ratified May 4, 1931. Chapter 342 applied the interest rate established by C. S. 8037 as amended, from the first Monday in June, 1931, the same as if the lands had been sold on that date. This was evidently done to take care of the situation produced by extension of the time for the sale of land for taxes for the year 1931, authorized by Chapter 342 of 1931.

This application of the interest rate so as to begin it on the first Monday in June, 1931, has no relation to land sales except those for the year 1931.

C. S. 8037, as amended from time to time, provides that the certificate of sale shall bear interest "from the date of sale." It follows, then, that the penalty under Section 805 of the Machinery Act cannot exceed 4 per cent, and the interest rate as set out in C. S. 8037, as amended, does not begin until the date of sale. Neither interest nor penalty is chargeable between June 2 and the date of sale. Where the sale of land for taxes was postponed this year to a date later than the first Monday in June, the delinquent taxes will not begin to bear interest until the date of sale.

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